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September 14, 2017

U.S. Citizenship and Immigration Services
Immigrant Investor Program Office
131 M Street, NE
Mailstop 2235
Washington, DC 20529

Re: Response to Notice of Intent to Terminate Regional Center
File: ID1031910148/RCW1031910148
Vermont Agency of Commerce and Community Development Regional Center

Dear Officer:

The Vermont Agency of Commerce and Community Development Regional Center (the “VRC”) received a Notice of Intent to Terminate, dated August 14, 2017 (the “NOIT”), from U.S. Citizenship and Immigration Services, based upon USCIS’s determination that the VRC no longer serves the purpose of promoting economic growth. Pursuant to 8 C.F.R. § 2014(m)(6), we hereby offer the following response in opposition to the NOIT, as well as a suggested solution for the State of Vermont (the “State”) and USCIS to work together to implement an orderly wind-down of the VRC over time (the “VRC Wind-Down”). As set forth in the “Review of the EB-5 Program in Vermont and the Vermont Regional Center,” dated August 18, 2017, prepared by Department of Financial Regulation (“DFR”) for the Governor of Vermont (the “DFR Report”), and attached hereto as Exhibit 1, the VRC Wind-Down would provide stability to existing VRC projects and protect economic growth, investors, and the local contractors those projects employ.

The NOIT proposes to terminate the VRC based on problems that the NOIT itself recognizes have been remedied and will not recur due to the 2014 structural changes at the VRC. Terminating the VRC now, with any oversight issues already in the past, will only cause harm to the very interests the Immigrant Investor Program (“EB-5” or the “Program”) is designed to promote. Further, the NOIT bases termination on a set of *ex post facto* standards that are not set forth in any statute or regulation, and thus do not provide a permissible basis for adverse administrative action.

We propose that USCIS work collaboratively with the State to implement the VRC Wind-Down, thereby meeting USCIS’s goal of ensuring that the Program promotes economic

growth, fostering such growth in Vermont during a transition period, and protecting innocent investors.

I. USCIS and the State should work collaboratively to implement the VRC Wind-Down.

Rather than abruptly terminate the VRC, USCIS should work collaboratively with the State to implement the VRC Wind-Down, which has been approved by the Governor of Vermont. As detailed in the DFR Report, this plan would wind down the VRC over a period of time in a manner that protects existing investors and continues to promote economic growth. The VRC would continue to sponsor and oversee its existing projects (and potentially one new phase of an existing project, as discussed in the DFR Report) so that existing investors could petition for their immigration benefits under the Program. However, the VRC would not take on any new EB-5 projects. DFR would provide ongoing financial oversight for the existing projects; as the NOIT recognizes, that oversight is “rigorous,” “robust,” and “comprehensive.” NOIT at 20.

As USCIS acknowledges in the NOIT, “not all of the Regional Center’s projects are associated with the SEC and Vermont complaints – only a subset of them are.” NOIT at 18. The VRC Wind-Down would protect the innocent investors in the projects where there is no allegation of fraud or other problems.

Further, USCIS acknowledges in the NOIT that no employees of the VRC or the State were involved in the alleged fraud at Jay Peak and the State “has taken actions to improve [its] monitoring and oversight of the [VRC] projects.” NOIT at 20. The NOIT recognizes that DFR has implemented “a rigorous compliance program for all [VRC] projects,” has “[set] robust standards that new EB-5 projects must comply with before associating with [the VRC], and [performs] comprehensive monitoring and oversight activities for current projects... .” NOIT at 20. The DFR Report details the significant monitoring and reporting requirements instituted by the State for oversight of sponsored projects. *See* DFR Report at 13-14. The State’s new compliance efforts have been in effect for almost three years and should give USCIS confidence that VRC projects are being adequately monitored.

The State believes the USCIS termination process should include the possibility of discussion with USCIS to resolve the NOIT, particularly in light of USCIS’s acknowledgement that the State has already instituted a system of oversight and management of existing projects that rebuts any potential basis USCIS has for terminating the VRC. The State and USCIS have a common goal in winding down the operations of the VRC. The only difference is in timing and approach. As USCIS itself acknowledges in its discussion of Public Comments on the Proposed Rule: Adjustment of the USCIS Fee Schedule, 75 Fed. Reg. 58962, “this regulation currently provides for a process of notice and rebuttal. The amended regulatory language leaves this process intact. Regional centers have been and will be provided with ample opportunity to overcome the reasons for termination of the regional center under this process.” In this case, the State does not seek to avoid closing the VRC, but to work with the USCIS to do so in an orderly manner that does not hinder economic growth or harm the interests of innocent projects, contractors, and investors.

The best way for USCIS to meet its statutory mission in promoting economic growth is to work collaboratively with the State to implement the VRC Wind-Down.

II. The VRC continues to promote economic growth.

The Appropriations Act of 1993, as amended (the “Act”), authorizing regional centers in the Program, explicitly enables them “for the promotion of economic growth” through investment by foreign nationals. In the NOIT, USCIS correctly identifies the Act as the sole statutory basis for terminating a regional center. A regional center may be terminated under the Act only when it “no longer serves the purpose of promoting economic growth... .” NOIT at 3. The VRC has promoted economic growth through its sponsorship of many successful EB-5 projects, and will continue to promote economic growth, regardless of whether it sponsors new projects in the future. The NOIT recites numerous statistics about the VRC projects completed, but there is also significant job creation currently underway and additional economic growth will occur as existing projects are completed, capital is redeployed, and project investors immigrate to the United States.

In total, EB-5 projects affiliated with the VRC have created at least 3,700 jobs and deployed hundreds of millions of dollars of foreign investment into the Vermont economy. Further, economic growth continues to occur through several ongoing VRC projects. Von Trapp Enterprises LP (“Trapp”) has so far saved or created more than 400 jobs and continues to have a positive impact on the Vermont economy through operation of an expanded resort and successful new brewery and beer hall. *See* letter from Johannes von Trapp, President of Trapp Family Lodge, attached hereto as Exhibit 2 (the “Trapp Letter”). Carinthia Group 2, LP and Carinthia Group 2, LP (collectively, “Mt. Snow”) have so far spent \$25.48 million of EB-5 proceeds to finance Mt. Snow projects. Construction continues on Mt. Snow’s new snowmaking reservoir and lodge, and job creation targets are being met. *See* letter from Richard K. Deutsch, Vice President of Business and Real Estate Development, Peak Resorts, Inc., attached hereto as Exhibit 3 (the Deutsch Letter”). The economic growth supported by the VRC’s sponsorship of these projects is completely divorced from any alleged lack of monitoring or oversight of the Quiros/Stenger projects. In fact, prior to receipt of the NOIT, Mt. Snow had begun discussions with the VRC about affiliating for its next phase, which would produce an estimated nearly 1,400 additional jobs.¹ The success of both Trapp and Mt. Snow shows that the VRC is currently promoting economic growth, and will continue to do so, unless it is terminated by USCIS.

On the other hand, terminating the VRC may either leave Trapp and/or Mt. Snow investors with no immigration benefits, or obligate Trapp and/or Mt. Snow to undertake efforts to refund those investors. The latter would be costly and harmful to those businesses, as it would likely require the businesses to access capital at potentially high costs to accomplish refunds and result in the loss of jobs in the region. Such an outcome would conflict with the stated goal of the Program by eliminating jobs and putting unnecessary financial strain on otherwise successful projects.

¹ As discussed in the DFR Report, under the State’s proposal, this phase of the existing Mt. Snow project would constitute the final project VRC sponsors before winding down.

As the NOIT indicates, permitting the VRC to remain open through completion of the Jay Peak Hotel Suites Stateside LP project (“Stateside”) with additional capital available from the April 13, 2017 settlement between Michael Goldberg, the Jay Peak receiver, and Raymond James & Associates (the “Raymond James Settlement”) would allow for additional job creation, both during the construction phase and after completion. If the VRC were to be terminated, those funds may be refunded to investors, mainly in China, instead of invested in the Vermont and U.S. economies. *See* letter from Michael Goldberg, Jay Peak receiver, attached hereto as Exhibit 4 (the “Goldberg Letter”).

Many investors in VRC projects may wait several more years for visa numbers before they are able to immigrate to the U.S. During that time, further economic growth may occur as job creating entities (“JCEs”) repay investments to the corresponding new commercial entities (“NCEs”) and, pursuant to recently clarified USCIS policy, the NCEs redeploy that capital into other at-risk investments. This redeployment of capital may take place at least until the end of the conditional residence of the investors, and would have significant ripple effects on the economy.

In addition, some of the Program’s most important economic benefits occur after the initial investments in EB-5 projects, when investors immigrate to the U.S. as conditional permanent residents. Investors and their families may buy houses, cars, and other goods and services, attend universities, start or buy other businesses, and so forth. If the VRC is permitted to continue sponsoring existing projects, then investors in those projects would continue to have a meaningful impact on the economy through the aforementioned activities.

III. Terminating the VRC would unnecessarily penalize innocent investors and have a chilling effect on the Program.

Terminating the VRC would not only have a negative impact on jobs and investment in the Vermont economy, but also likely cause unnecessary harm to innocent investors in VRC-affiliated projects. In addition, if USCIS were to follow through with a precipitous termination of the VRC, and subsequently deny or revoke petitions filed by innocent investors in projects uninvolved with the alleged wrongdoing, EB-5 participation in Vermont and throughout the country would likely decrease dramatically. To avoid these unnecessary and unfair consequences, the VRC should be permitted to remain open through the lifespan of immigration processing for the hundreds of investors already sponsored.

Terminating the VRC, and consequently denying the Form I-526 petitions of investors in affiliated projects who are not yet admitted as conditional permanent residents, could have serious and wide-ranging adverse impacts. 104 innocent investors in Mt. Snow,² 31 innocent investors in Trapp,³ and approximately 72 innocent investors in Jay Peak projects,⁴ who have not

² *See* Deutsch Letter.

³ *See* Trapp Letter.

⁴ *See* Goldberg Letter. In addition, as set forth in the Goldberg Letter, AnC Bio investors’ funds could potentially be redeployed into a replacement project, which would preserve the priority dates for approximately 75 investors in that project.

yet been admitted as conditional permanent residents, would be prevented from immigrating to the U.S. Those investors would lose their priority dates and, to continue in the Program, be required to make entirely new investments pursuant to a potentially revised set of regulations. USCIS's action would unfairly harm those investors by terminating their immigration benefits based on the alleged fraud of project managers completely unrelated to their investments. In addition, if the VRC's designation were to be terminated, and Stateside not permitted to be completed with Raymond James Settlement funds, the economic growth fostered by that project would be unnecessarily diminished.

On a broader scale, prospective EB-5 investors everywhere may be less likely to participate in the Program if USCIS terminates the VRC for the reasons stated in the NOIT. Investors in legitimate, well-run NCEs and projects may worry that the sponsoring regional center could be terminated for reasons unrelated to their NCE or project, leading to the denial or revocation of their Form I-526 petitions. Thus, terminating the VRC may well have a broad chilling effect on the market for EB-5 investments, on a national scale, not just in Vermont, and frustrate the goal of promoting economic growth. *See* letter from Peter D. Joseph, Executive Director of IIUSA, attached hereto as Exhibit 5.

IV. Regional center oversight and management obligations are not specified by law or regulation; such unspecified obligations cannot serve as the basis for terminating the VRC.

A. No law or regulation sets forth a regional center's monitoring and oversight obligations.

A regional center's responsibilities for the oversight of day-to-day operations of the separate and unaffiliated sponsored NCEs are not established in any law, regulation, or published policy, and are not defined anywhere. It would be unreasonable to terminate the VRC for a perceived failure to comply with requirements that are not sufficiently enunciated or supported in the law, as due process prohibits arbitrary action by government bodies.

The purpose of Section 610(a) of the Act is for regional centers to promote economic growth through EB-5 investment in transformational projects. S. Rep. 102-331 at 118 (1992). The Act does not require that regional centers be independent financial auditors of the enterprises whose investors it sponsors. In the NOIT, USCIS states that "[a] Regional Center must continue to demonstrate ongoing active engagement in monitoring, oversight and due diligence of all investment activities under its sponsorship." NOIT at 16. However, USCIS cites no law or regulation that creates such an obligation. The 2010 USCIS regulations, which initiated the annual regional center reporting (the "2010 Regulations"), simply require each regional center annually to "demonstrate [it] is continuing to promote economic growth..." 8 C.F.R. § 204.6(m)(6)(i)(B). The 2010 Regulations focus on the collection of information on activity from the sponsored enterprises and timely provision of that information to USCIS. Since implementation of the 2010 Regulations, the VRC collected the required information from projects — and severed ties with projects that refused to provide it. The VRC also timely reported required information to USCIS.

The NOIT points to general statements in VRC approval notices from 2007, 2009, and 2010. For example, approval notices stated that “administration, oversight, and management of your regional center shall be such as to monitor all investment activities under the sponsorship of your regional center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date information” NOIT at 17. As noted above, the VRC complied with the annual requirement by requiring projects to report on their investment activities in a manner sufficient for the VRC to do all required reporting to USCIS.

Moreover, in more recent approval notices issued since the 2010 Regulations, USCIS’s template language states only as follows:

As provided in 8 C.F.R. § 204.6(m)(6), to ensure that the regional center continues to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis or as otherwise requested by USCIS. The applicant must monitor all investment activities under the sponsorship of the regional center and to maintain records in order to provide the information required on the Form I-924A, Supplement to Form I-924. Form I-924A, Supplement to Form I-924 Application is available in the “Forms” section on the USCIS website at www.uscis.gov.

Regional centers that remain designated for participation in the Immigrant Investor Program as of September 30th of a calendar year are required to file Form I-924A Supplement in that year. The Form I-924A Supplement with the required supporting documentation must be filed on or before December 29th of the same calendar year.

The failure to timely file a Form I-924A Supplement for each fiscal year in which the regional center has been designated for participation in the Immigrant Investor Program will result in the issuance of an intent to terminate the participation of the regional center in the Immigrant Investor Program, which may ultimately result in the termination of the designation of the regional center.

Thus, all USCIS has specifically told regional centers to do is to collect information from sponsored projects to complete Form I-924A, which requires them only to indicate how much capital was invested or released from escrow into a particular NCE in a given year, and how much capital was transferred from a JCE to a NCE. The VRC complied with this reporting requirement. Moreover, requirements set forth in approval notices issued since the 2010 Regulations are quite far from the sweeping obligations described in the NOIT. Forms I-924 and I-924A say nothing about regional center monitoring and oversight as part of the annual reporting to USCIS.

Further, USCIS issued an Advance Notice of Proposed Rulemaking (“ANPR”) on January 11, 2017 to consider making regulatory changes to the Program based, in part, on the determination that “program changes are needed to better reflect business realities for regional centers.” The ANPR includes an entire section dedicated to “Safeguards for Monitoring and Oversight” aimed at providing “regional centers with the tools to ensure that associated NCEs and JCEs comply with program requirements.” USCIS proposes that the new regulations may require from regional centers, “periodic demonstrations that the regional center has active monitoring and oversight activities.” 82 Fed. Reg. 3211-01. These regulatory changes are needed because there is currently no clear requirement for regional centers to engage in continuous active monitoring and oversight. *Id.* (requirements on regional centers are “subject to varying interpretations”). The ANPR’s attempt to give clearer direction to regional centers is consistent with an earlier Office of Inspector General Report on the Program that found federal law and regulations lacking for enforcement based on fraud or national security concerns. *See* Dept. of Homeland Sec. Office of Inspector Gen., *United States Citizenship and Immigration Services’ Employment-Based Fifth Preference (EB-5) Regional Center Program*. Office of Inspector Gen. Report (Dec. 2013) at 1, 13.

The “integrity measures” proposed in the ANPR reflect the lack of clarity surrounding the current regional center obligations and the need to better define their evolving roles. Legislative proposals for such measures have been proposed.⁵ Final published guidance from USCIS on the obligations of regional centers will be welcome but has never yet been available. It would be inappropriate and unreasonable for USCIS to sanction the VRC for violation of standards that USCIS never has articulated in the 25 years of the regional center program, and thereby also punish innocent investors, in the name of promoting economic growth through the Program.⁶

The VRC agrees with USCIS that better guidance is needed to define regional centers’ roles and responsibilities. While the VRC supports USCIS’s current efforts to bring clarity to future standards applied to regional centers, we disagree with USCIS’s essentially *ex post facto* attempt through the NOIT to hold the VRC to an undefined standard that was never communicated to it. The NOIT effectively holds the VRC liable for the alleged secret fraudulent conduct of others. Only after defining standards may USCIS properly terminate regional centers for violating them.

⁵ *See* S. 2415, 114th Cong. (2015); H.R. 5992, 114th Cong. (2016); S. 4530, 114th Cong. (2016).

⁶ To our knowledge, USCIS has never before attempted to terminate a regional center based on its alleged failure to adequately monitor and oversee project principals who were not also principals of the regional center. The non-precedent decision of the AAO in *Matter of SDRC*, Mar. 15, 2017, does not change the analysis or outcome in the present case. That case involved alleged fraud by the manager/general partner of NCEs who also managed the regional center. It did not involve, as here, an alleged failure to monitor and oversee managers of independent projects. Application of the analysis in *SDRC* would lead to a reversal of the NOIT in this case because USCIS did not engage in any balancing of the equities, called for by the *SDRC* decision, to determine if a regional center continues to promote economic growth. *SDRC* at 6.

B. The NOIT fails to identify any legal standard for measuring the adequacy of the VRC's monitoring and oversight.

The NOIT fails to identify any standard for measuring the adequacy of project monitoring and oversight. The NOIT does not state what standard of care applies to a regional center or whether USCIS must show any level of intent (e.g. recklessness, gross negligence, or mere negligence), associated with a regional center's alleged conduct, to warrant termination. In fact, the NOIT seems to apply a strict liability standard – saying that because fraud occurred on the VRC's watch, the VRC therefore *ipso facto* failed to adequately monitor and oversee the projects and should be terminated. *See, e.g.*, NOIT at 18 (after noting that the fraud was committed by the project principals and not by the VRC, USCIS finds that, “[n]onetheless, ... the Regional Center... allowed the alleged malfeasance by Quiros and Stenger to occur... .”; *id.* at 19 (“[T]he ultimate responsibility for compliance with the relevant statutes and regulations, remains with the regional center itself.”).

Federal law does not authorize USCIS to impose a strict liability standard on a regional center for all fraud that may be secretly committed by project principals, or to apply an unarticulated standard of care as the basis for terminating a regional center. As discussed above, neither the Act nor the regulations promulgated thereunder articulate any obligation of regional centers to financially oversee and monitor sponsored projects, let alone set a sufficient standard for terminating on that basis. The VRC has met its statutory and regulatory obligations. The Jay Peak project developers perpetrated the alleged fraud on investors, on USCIS, *and on the VRC*.

The DFR Report and the VRC's August 25, 2016 RFI Response⁷ both provide a detailed history of the VRC and the investigation into the Jay Peak projects. As set forth therein, the State met any reasonable obligation that the applicable statutes and regulations can be interpreted to impose.

The State played a vital role, together with the federal government, in investigating and unraveling the alleged Jay Peak fraud – a fact that the SEC and Receiver Goldberg have repeatedly stated. USCIS notes in the NOIT that, in his press statement regarding the Raymond James Settlement, Receiver Goldberg was thankful for the State's efforts to help “structure the settlement and protect ‘the defrauded investors and creditors since the very beginning of the case’.” NOIT at 15, quoting Receiver Goldberg's Press Release, April 13, 2017, at 1.⁸ The SEC expressed its appreciation to the State for its assistance in the SEC civil enforcement action. *See* SEC Press Release, April 14, 2016, at 2. USCIS itself recognizes the “rigorous compliance program” and “robust standards” implemented by DFR. NOIT at 20.

In sum, the only standard to which the VRC should be held is whether it continues to promote economic growth. The VRC has implemented a robust regulatory scheme that has

⁷ Attached as Exhibit F to the DFR Report.

⁸ The State also has had a Common Interest Agreement with Receiver Goldberg for the sharing of confidential information since just after the filing of the civil enforcement cases and Receiver Goldberg's appointment by the federal court in Miami.

protected investors and creditors and continues to promote economic growth. The VRC should not be terminated to the detriment of innocent project developers and economic growth.

C. The NOIT evidence is insufficient to terminate the VRC.

The NOIT's cited evidence is insufficient to provide a basis for terminating the VRC. The NOIT states that the evidence for termination of a regional center must be considered "for relevance, probative value, and credibility." NOIT at 16 (quoting *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010)). In *Chawathe*, the evidence in question was a Form 10K based on audited financial statements and reviewed by the SEC; it was deemed to contain highly credible information that established a fact as "probably true." *Chawathe* at 376. In contrast, the NOIT cites unadjudicated civil complaints and press articles.⁹

As evidence, the NOIT cites a press article about reported questions raised by a former business partner and others about possible financial irregularities at the Jay Peak projects in 2012. The NOIT states, "[i]f this article is correct, then [the VRC] fell short in fulfilling its monitoring and oversight responsibilities." NOIT at 18. The language of the NOIT makes it clear that USCIS did not substantiate the context or correctness of the article. Moreover, a press article – no matter the author – lacks probative value and credibility. *See, e.g., Spotts v. U.S.*, 562 F. Supp. 2d 46, 54 (D.D.C. 2008) ("[N]ewspaper articles cannot serve as evidence of the truth of the matter asserted..."). Terminating the VRC based on newspaper articles is unreasonable, arbitrary, and capricious. *See Chagra v. Comm'r*, 1991 Tax Memo 91,366 (U.S. Tax Ct. 1991); *aff'd*, 990 F.2d 1250 (2d Cir. 1993), *cert. denied*, 510 U.S. 990 (1993) (government's determination based on a newspaper article without further investigation is unreasonable, arbitrary, and capricious).

The Vermont, SEC and Investor complaints, also cited in the NOIT, have not been adjudicated by a court. *See* NOIT at 17 ("[A]llegations in the SEC, Vermont and Investor complaints,... indicate serious problems with various [VRC] projects, suggesting inadequate monitoring, oversight and management by the [VRC]"); *id.* at 18 ("As seen . . . in the SEC and Vermont complaints, it appears that for years [the VRC] relied excessively" on third party project managers for oversight). While the State stands by its complaint, it denies the allegations in the Investor complaint. The SEC and State complaints do not allege any wrongdoing or lack of oversight by the VRC or any State actor, and thus do not support termination.

Unproven allegations are suspect as a basis for adverse governmental action. *See Int'l Exports, Inc. v. Mattis*, 2017 WL 3025837, at *10 (D.D.C, July 17, 2017) (government's reliance on "unproven allegations" to debar a company from government contracting is "arbitrary and

⁹ The NOIT relies on the press articles for at least two inaccurate factual findings. First, USCIS claims that Stowe Aviation ended its relationship with the VRC. NOIT at 26. In fact, however, both parties (Stowe Aviation and the VRC) mutually terminated their MOU because of disagreements and, the State contends, a lack of cooperation by the project with the VRC's requests for information. Second, USCIS claims that Peak Resorts, Inc. would not work with the VRC for the next phase of the Mt. Snow project and that its executive Dick Deutsch "reportedly 'told investors that he wanted to divorce Mount Snow's projects from the State's EB-5 troubles'." NOIT at 26. However, as evidenced by the attached letter from Mr. Deutsch in support of the VRC, prior to receipt of the NOIT, Mt. Snow had begun conversations with DFR about affiliating with the VRC for a future phase of the project. Exhibit 5.

capricious” – the allegations were “unproven and untested”); *N.Y. and Presbyterian Hosp. v. City of New York*, 971 N.Y.S. 2d 72 (N.Y. Sup. Ct. 2013) (arbitrary and unreasonable for City to post public “Caution Notification” based on allegations against hospital that were settled without admission of wrongdoing). Thus, the allegations in the cited complaints are insufficient to terminate the VRC.

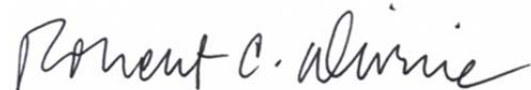
V. Conclusion

The State and USCIS have a common interest in ultimately closing the VRC. USCIS acknowledges that the State now adequately monitors and oversees current VRC projects, and the State has announced that the VRC is seeking only to continue as a regional center for existing projects (and possibly a new phase at Mount Snow), and not to sponsor any new EB-5 projects. As more fully discussed herein, USCIS and the State should work to reach agreement on implementing the VRC Wind-Down in an orderly fashion, thereby protecting existing investors and supporting the economic development associated with the existing projects.

To that end, the Secretary of Agency of Commerce and Community Development and the Commissioner of Department of Financial Regulation request a meeting with USCIS officials to discuss implementation of the Wind-Down Plan.

Legally, the NOIT does not support termination, as shown above. By statute, USCIS can terminate the VRC only if it is not continuing to promote economic growth, and not on the basis of an *ex post facto* oversight standard not set forth in statute or rule. If USCIS abruptly terminates the VRC, it will exacerbate the very harms it seeks to prevent. Terminating the VRC will harm innocent investors in innocent projects and reduce economic growth, contrary to USCIS’s statutory mission.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert C. Divine". The signature is fluid and cursive, with the first name "Robert" being the most prominent part.

Robert C. Divine

Vermont Agency of Commerce and Community Development Regional Center

ID 1031910148 / RCW 1031910148

Exhibits to Response to Notice of Intent to Terminate

1	Review of the EB-5 Program in Vermont and the Vermont Regional Center prepared by the Department of Financial Regulation (“DFR”)
2	Letter from Johannes von Trapp, President of Trapp Family Lodge
3	Letter from Richard K. Deutsch, Vice President of Business and Real Estate Development, Peak Resorts, Inc.
4	Letter from Michael Goldberg, Jay Peak receiver
5	Letter from Peter D. Joseph, Executive Direct of IIUSA

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1	Review of the EB-5 Program in Vermont and the Vermont Regional Center prepared by the Department of Financial Regulation (“DFR”)
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Review of the EB-5 Program in Vermont and the Vermont Regional Center

August 18, 2017

Michael S. Pieciak
Commissioner of Financial Regulation

in consultation with

Michael Schirling
Secretary of Commerce and Community Development

Introduction

The Governor's office requested the Department of Financial Regulation ("DFR") to undertake a programmatic review of the operations of the Vermont EB-5 Regional Center ("VRC" or "Center") and, in consultation with the Secretary of the Agency of Commerce and Community Development ("ACCD"), Michael Schirling, make a recommendation to the Governor about its future.

This report considers the following:

- 1) The enactment and growth of the EB-5 Program in the United States;
- 2) The establishment of the VRC and a review of its operations;
- 3) An overview of the State's interactions with, and eventual investigation into, the Jay Peak projects;
- 4) The federal and state regulatory requirements for EB-5 projects, and how these requirements evolved over time;
- 5) The structural changes made to the VRC in 2014, and the reasons for these changes; and
- 6) A recommendation with respect to the future of the VRC.

Executive Summary

Since the VRC's creation in 1997, its history and development have generally paralleled the EB-5 program nationally. Like the national program, the VRC had little or no activity in its early years and only modest activity until domestic capital became less available in the Great Recession of 2008. The EB-5 program was regulated relatively informally at the federal level until 2013 when the Securities and Exchange Commission ("SEC") brought a series of highly publicized fraud cases involving EB-5 projects. Until that time, there was some doubt as to whether EB-5 projects involved the sale of securities, as EB-5 investments are private offerings made only to sophisticated foreign investors.

ACCD was the VRC's sole administrator from 1997 to December 2014. In its history, the VRC has entered into a total of 17 memoranda of understanding with EB-5 projects ("Project MOU"), including eight related to Jay Peak, AnC Bio, and Burke Mountain. In December 2014, ACCD and DFR signed a memorandum of understanding ("2014 MOU") that created a role for DFR as VRC co-administrator. The 2014 MOU reflected the recognition of the potential structural issues raised by having one agency responsible for screening projects, marketing the VRC, and

monitoring for compliance with legal requirements. The 2014 MOU makes ACCD responsible for reporting to the U.S. Citizenship and Immigration Service (“USCIS”), which administers the EB-5 program federally, and for assisting in marketing the VRC. The MOU makes DFR responsible for screening and regulatory compliance. This division is consistent with the traditional missions of both offices.

After entering into the 2014 MOU, DFR, in coordination with the Attorney General’s Office, ACCD, and the SEC, began to investigate all of the Jay-Peak-related EB-5 Projects. In April 2016, the State and SEC filed civil enforcement complaints alleging widespread fraud by the two principals in those projects. Since April 2016, the State’s efforts, along with those of the federal authorities and the receiver, have resulted in total settlements of approximately \$163 million. Those settlements have helped maintain operations at Jay Peak and preserve hundreds of jobs while paying back local business creditors and EB-5 project investors.

Looking forward, ACCD and DFR believe the EB-5 program, properly reformed, has merit, and we recommend that the State work with the federal delegation and other stakeholders to advocate to Congress that the EB-5 program be appropriately reformed and reauthorized. As for the VRC, we have evaluated four options for its future:

- close the VRC immediately and stop all center activities (Option 1);
- transfer all VRC activities and responsibilities to a private entity and close the VRC (Option 2);
- continue the status quo with the VRC screening and taking on new projects and overseeing the existing projects (Option 3);
- wind down the VRC over time, overseeing existing and pending projects but not taking on new ones (Option 4).

As explained below, Options 1 and 2 are not legally viable, and we believe Option 3 (status quo – continued operation) is not a desirable outcome. Administering the VRC requires significant State resources and adds unnecessary complexities for projects because of State involvement. Further, the need for a State-run regional center has greatly diminished over the last decade as hundreds of privately run regional centers have been established. We believe the potential economic opportunities and benefits of EB-5 financing would remain available to Vermont developers regardless of the VRC’s continued operation.

DFR and ACCD believe the best course is Option 4 — winding down the VRC over time, fulfilling all obligations for existing projects but not taking on new ones. This will allow the VRC to honor its commitments to existing projects and investors, but recognizes that the State does not need to operate a regional center for developers to pursue EB-5 financing of economic development in Vermont. The private sector will provide regional center services for new EB-5 projects. An orderly wind-down process will allow the VRC to meet its existing obligations and put the State on a path toward eventually closing the VRC, removing the inherent downsides associated with continued operation.

1. The History of the EB-5 Program

The EB-5 Immigrant Investor Program (“EB-5 Program”), was established by the federal Immigration Act on November 29, 1990.¹ It was initially administered at the federal level by the Immigration and Naturalization Service (referred to herein by its current name, U.S. Citizenship & Immigration Services, or USCIS). Other countries have programs similar to EB-5.² Under the 1990 Act, the EB-5 program allowed visas to be issued only to immigrant entrepreneurs who would themselves work in the job-creating business they invested in; visas were not available to passive investors. Also, under the 1990 Act, an immigrant’s investment had to *directly* create 10 new full-time jobs in the US (i.e. all jobs had to be at the business invested in).

In 1993³ and 2002,⁴ federal amendments to the 1990 Act substantially broadened the program by creating the Immigrant Investor Pilot Program and eliminating the requirement that the investor “establish” the enterprise they invested in. The Pilot Program allowed EB-5 investments in any project affiliated with a public or private “regional center” rather than in an entity that would employ the investor. The regional-center avenue is only available, however, in a Targeted Employment Area (“TEA”), designated by a State, in which unemployment is at least 150% the national average. All of Vermont except for the Burlington Metropolitan Statistical Area is a TEA.

The Pilot Program also allowed EB-5 investors to rely on the creation of *indirect* jobs (i.e. jobs caused by the investment, but not at the project itself). An indirect job could be, for example, a teaching position made necessary by population growth caused by the project. The 1993 and 2002 changes shifted the EB-5 program from benefiting entrepreneurs only, to primarily benefiting passive investors, while also dramatically expanding the manner of calculating job-creation. Investing in a TEA allows for an EB-5 minimum investment of \$500,000 rather than the otherwise-applicable minimum of \$1 million.

¹ Pub. L. 101-649; 104 Stat. 4978.

² See, e.g. *Investors, Entrepreneurs, and Self-Employed Persons* (describing Canada’s Immigrant Investor Program) (<http://www.cic.gc.ca/english/immigrate/business/investors/index.asp>); other countries with immigrant investor programs include the UK, Spain, Portugal, Belgium, Switzerland, Australia, and Ireland.

³ Pub. L. 102-395, § 610 (*The Judiciary Appropriations Act*).

⁴ Pub. L. 107-273, § 11036 (*The 21st Century Dept. of Justice Appropriations Authorization Act*).

Despite the 1993 and 2002 expansions, the EB-5 program nationally remained quite small until the Recession of 2008. Although up to 10,000 visas per year were allocated to the program, during the early- and mid-1990's the maximum number of conditional visas issued was just over 1,500 (in 1997) and the annual average was closer to 500.⁵ Between 1990 and 2004 only 653 total investors, nationwide, had achieved permanent-resident status via EB-5. Even as late as 2007, only 800 conditional EB-5 visas issued nationally.

The contraction in domestic capital availability in the Recession greatly increased developers' interest in EB-5 investments as a source of funding.⁶ The years 2010 through 2012 saw an average of over 4,000 EB-5 visas issued nationally, with nearly 7,000 issued in 2012 alone.⁷ In 2014, the program reached its limit of 10,000 yearly visas, and 9,764 and 9,947 visas were issued in 2015 and 2016, respectively.

The number of regional centers also ballooned after the Recession — from 16 in 2007, to over 800 at the time of this writing.⁸

The amount of foreign EB-5 investment followed the same pattern. In the years from 1990 through 2008, the national investment total never exceeded \$550 million in any year, and in many years was less than \$100 million nationwide. Beginning in 2009, however, the program has brought at least \$621 million each year, and since 2014 has averaged over \$3 billion per year.⁹

While instances of alleged wrongdoing in EB-5 projects date back to the late 1990's, when the program was small, none of the cases involved enforcement of the securities laws until 2013. For example, in the mid-2000's South Dakota's regional center (at times State-run, and at times run by a private company under contract with South Dakota) was beset by scandal relating to a State employee founding a private regional center and transferring the state's EB-5 projects to it, enriching

⁵ See April 2005 GAO Report, *Immigrant Investors: Small Number of Participants Attributed to Pending Regulation and Other Factors* (<http://www.gao.gov/new.items/d05256.pdf>) at 1.

⁶ See February 2014 Brookings-Rockefeller Report, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, (https://www.brookings.edu/wp-content/uploads/2016/06/EB5_Report.pdf) at 2.

⁷ *Id.* at 7, fig. 2 and accompanying text.

⁸ USCIS, *Immigrant Investor Regional Centers* (<https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>).

⁹ *EB-5 Data Dashboard*, Investing in the USA (IIUSA) (<https://share.geckoboard.com/dashboards/F7C1F0339D47813D>)

himself.¹⁰ The South Dakota Attorney General and the US Attorney's Office, and not the SEC or State securities regulators, brought enforcement actions against the State employee.

In 2013, the SEC brought its first enforcement actions against EB-5 project principals and made clear that EB-5 projects would be subject to SEC scrutiny under the Securities Act of 1933. In that year, the SEC brought two major enforcement cases and in October 2013 issued a watershed bulletin outlining the intersection of securities law and the EB-5 program.¹¹

Most noteworthy in the history of EB-5 securities enforcement is the so-called "Chicago Convention Center" fraud, which the SEC began prosecuting in early 2013.¹² In that case, the SEC alleged that the developer misused most of the \$11 million in administrative fees, and misrepresented many material aspects of the \$145 million project. The Chicago Convention Center case was the first major EB-5 enforcement action brought by the SEC, and was pivotal in establishing the national understanding of the EB-5 program as a potential area of real interest for financial regulators.

Since 2013, federal enforcement efforts have been more keenly focused on the EB-5 program's securities-law aspect, and federal authorities have brought dozens of securities-based enforcement actions against EB-5 developers. The Jay Peak cases, of course, are one example. Another is the so-called "Path America" case in Seattle, which involved a developer taking in \$150 million in Chinese EB-5 investment, but diverting over \$10 million to other projects and excessive foreign broker fees, and \$3 million to his own use. The developer pled guilty to federal criminal fraud charges in 2015.

DFR is, to our knowledge, the only state securities regulator to have brought an EB-5 enforcement action.

¹⁰ *What You Need to Know About EB-5 in South Dakota*, October 8, 2014, *Argus Leader*, available at <http://www.argusleader.com/story/davidmontgomery/2014/10/08/eb-5-primer/16890965/>

¹¹ See https://www.sec.gov/oiea/investor-alerts-bulletins/investor-alerts-ia_immigrant.htm (October 1, 2013 investor bulletin, offered in English, Chinese, Korean, and Spanish); see also <https://www.sec.gov/news/press-release/2013-210> (SEC press release concerning *SEC v. Ramirez* civil fraud case).

¹² <https://www.sec.gov/litigation/litreleases/2013/lr22615.htm> (SEC press release unsealing charges in Chicago Convention Center case).

Notwithstanding the new federal focus on enforcement, new regional centers have been founded in steady numbers since 2013, including at least one additional state-run regional center (State of Michigan EB-5 Regional Center).¹³

Throughout its history, the EB-5 program has been a near-constant subject of debate at the federal level, with high-profile attempts to end the program occurring in nearly every legislative session, along with calls for various reforms. A fundamental component of the debate is whether the United States ought to engage in a so-called “citizenship-for-sale” program at all. The program’s future remains uncertain — the legislation enabling the regional-center program, which accounts for over 95% of EB-5 investment, is temporary and is set to expire on September 30, 2017.¹⁴

2. The Vermont Regional Center and EB-5 in Vermont

The VRC was designated as a Regional Center by the INS (now USCIS) in 1997. The designation was — in accordance with existing law at the time — relatively informal, and was performed by letter. Under the designation, and through 2014, the VRC was administered entirely by ACCD.

The VRC’s history mirrors the EB-5 program’s national progression from small and informal to larger and more rigorously scrutinized.

Until December 2006, there were no EB-5 projects formally affiliated with the VRC. During this time, the VRC operated under ACCD’s statutory powers to promote commerce and trade, but there were no Vermont statutory or regulatory changes to govern the EB-5 program. Indeed, the first EB-5-related state statute in Vermont was the funding statute passed in 2011. *See infra* § 4(d).

The first project to affiliate formally with the VRC was Phase I (Tram Haus Lodge) at Jay Peak, which signed a Memorandum of Understanding (“MOU”) with the VRC in December 2006. In total, the VRC has executed MOU’s with seventeen EB-5 projects, eight of them related to Jay Peak, AnC Bio, or Burke Mountain.¹⁵ The following chart shows the projects and their dates of affiliation.

¹³ March 28, 2014 *Initial Regional Center Designation for State of Michigan EB-5 Regional Center, LLC* (http://www.michigan.gov/documents/snyder/Approval_Michigan_EB5_Regional_Center_453217_7.pdf)

¹⁴ In fact, in February 2017, the Chair and Ranking Member of the Senate Judiciary Committee co-sponsored a bill to eliminate the EB-5 program outright. See <https://www.grassley.senate.gov/news/news-releases/Feinstein-grassley-introduce-legislation-eliminate-troubled-eb-5-investor-visa>.

¹⁵ Appendix A provides a more detailed overview of the VRC projects, including: (a) description of the project; (b) status of the capital raise; and (c) status of construction.

Project / Phase	Date of MOU(s)
Jay Peak Phase I (Tram Haus Lodge)	December 2006
Sugarbush Resort	January 2007
Jay Peak Phase II (Hotel Jay)	July 2008
Country Home Products	October 2009
Seldon Clean Water Products	May 2010
American Dream Fund	July 2010
Jay Peak Phase III (Penthouse Suites)	July 2010
Jay Peak Phase IV (Golf & Mountain)	November 2010
Jay Peak Phase V (Lodge & Townhouses)	November 2010
Jay Peak Phase VI (Stateside)	November 2010
Taurus Quechee Corporation	May 2012
Jay Peak Phase VII (AnC Bio)	October 2009 & October 2012
Von Trapp Enterprises	May 2013
Burke Hotel	November 2012 & June 2013
Stowe Aviation	May 2014
Mount Snow	September 2014
South Face Village at Okemo	January 2015

The number and size of projects increased steadily until roughly 2012-14, paralleling the nationwide trend. The first VRC project (Tram Haus Lodge) raised \$17.5 million in EB-5 funds; subsequent Jay Peak projects were all at least 90% larger than that, and several were more than 300% larger. And while other VRC projects have generally been smaller, one of the most recent (Mount Snow) is the largest non-Jay project yet.

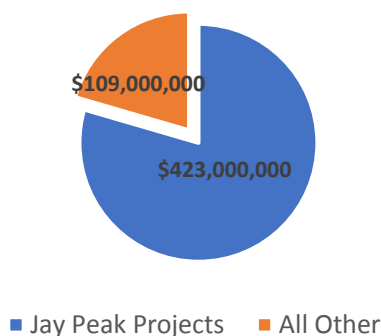
In total, the VRC-affiliated projects have resulted in the deployment of hundreds of millions of dollars in foreign capital in Vermont, and USCIS has confirmed the creation of at least 3,700 jobs as a result.¹⁶ Several of the non-Jay projects raised

¹⁶ Each of the 370 approved I-829 petitions in the VRC's history required a finding by USCIS that at least 10 jobs had been created by that investor's investment.

capital, completed construction, and are operating successfully, including Sugarbush Resort, Country Home Products, and Von Trapp Enterprises. For each of these projects, EB-5 capital raised through the VRC was a significant component of total capital.

As the chart below illustrates, however, the Jay Peak projects have accounted for the vast majority (roughly 80%) of the total capital raised in VRC projects.

Funds Raised in all VRC Projects



Throughout the VRC's history, staff and financial resources devoted to it have increased substantially as well, particularly in the past four years. As of July 2017, DFR and ACCD have expended approximately \$1.3 million to administer the program, with tracked expenditures starting in FY2008. Of that total, approximately \$773,617 reflects ACCD expenditures from 2008 to the present, with the remaining approximately \$535,637 incurred by DFR from late 2014 to the present.

ACCD's EB-5 expenditures have come from the General Fund and the EB-5 Special Fund (formerly known as the EB-5 Enterprise Fund). The EB-5 Special Fund was established in 2011 to "reduce or eliminate the need for legislative appropriations to support Regional Center expenses." 10 V.S.A. § 21(a). Since FY2008, the General Fund has covered approximately \$569,633 of ACCD's expenses, while the Special Fund has covered expenses totaling approximately \$203,984 since FY2013.

ACCD's expenditures have included funding for a single dedicated EB-5 staff position from 2013 through July 2016, as well as costs related to travel, staff training, trade show expenditures, third-party contractors including legal counsel, and general office overhead. Except for the staff position costs, ACCD's post-2012 EB-5 expenditures have been covered by the Special Fund, with the General Fund covering any deficit. The Special Fund is exclusively funded with dedicated EB-5 project developer fees. See 10 V.S.A. § 21(c). A summary of annual EB-5 related ACCD expenses paid through both the General and Special Funds is attached hereto as Appendix B.

In December 2014, after more than 17 years with ACCD as the sole VRC administrator, DFR took on a formal role pursuant to an MOU with ACCD.¹⁷ Since then, DFR has devoted substantial resources to ensuring that VRC projects comply with Vermont and federal securities laws. DFR has incurred approximately \$535,638 in EB-5 related expenses since FY2015. DFR's expenses include staff training, internal staffing, and substantial third-party forensic auditor costs for the Jay Peak investigation (reflected in FY2016). DFR has funded two dedicated internal EB-5 positions starting in September 2015 and March 2016, respectively, and continues to do so. All EB-5 related DFR expenses have been covered by DFR's Securities Regulation Fund, which is funded by securities filing and registration fees, and penalty dollars received through enforcement actions. A summary of annual EB-5 related DFR expenses paid through the Securities Regulation Fund is attached hereto as Appendix C.

As of this writing, one VRC project with a multi-phase master plan is contemplating future phases. This project has applied for designation as a regional center independent of the VRC, but is also in discussions with the VRC about affiliating for its next phase, which involves more than one hundred ski-in, ski-out condominiums. As discussed in § 6 of this Report, ACCD and DFR both agree that the State's interests could be well served by exploring affiliation with this new phase as the last VRC project.

At least one other EB-5 project has been completed in Vermont without the involvement of the VRC, via affiliation with a privately run regional center; that project is currently operating.

3. The State's Involvement with, and Eventual Investigation into, the Jay Projects

The first Jay Peak related project (Phase I / Tram Haus Lodge) affiliated with the VRC in late 2006. It was followed in 2007 – 2013 by five other Jay Peak Projects, Burke Mountain, and AnC Bio. See Appendix A. These eight projects are referred to collectively here as “the Jay Projects.”

In the early years of the Jay Projects, the VRC's role was constrained by the issues noted above and by ACCD's limited statutory powers. During those years, in line with ACCD's statutory role, the VRC worked to ensure that all VRC projects were able to navigate the USCIS process, were consonant with the Vermont brand, and had a viable business model likely to create the requisite jobs. *See* § 4(d) (further discussion of ACCD's statutory authority).

The VRC has at all times provided publicity via its website for all VRC projects currently raising money. VRC staff are instructed to direct prospective investors to

¹⁷ See Appendix D (2014 ACCD/DFR MOU).

the website for further information about projects, and to make clear to investors that it is their obligation to conduct their own due diligence before investing.

Since roughly 2008, VRC staff and other State employees, in cooperation at times with the Vermont Chamber of Commerce, traveled internationally to promote the VRC and its projects generally. At times those trips also involved broader promotion of the State's international-trade interests, but some trips were directed solely at EB-5 promotion, including the Jay Projects.

Throughout the life of the Jay Projects, ACCD reports that it conducted periodic site visits, at the suggestion of INS/USCIS. Those visits were to ensure that construction was proceeding in a timely way, and did not involve financial audits.

In 2012, the principal of a commercial entity that had been soliciting investors on behalf of the Jay Projects stated publicly that he had lost confidence in the projects. ACCD reviewed the information and spoke with the principal and others. ACCD requested pertinent information from the projects, which did not provide it; ACCD ultimately determined that it lacked clear legal authority under the existing MOU to force the projects to do so. ACCD then began having significant concerns about whether all material information about the Jay Projects, particularly AnC Bio and Burke Hotel, had been disclosed to investors. Beginning in October 2012 with the revised MOU between the VRC and AnC Bio, the VRC's standard MOU contained language calling for compliance with all applicable state and federal securities laws and regulations.

Concurrently, ACCD began to request more detailed information from the Jay Projects. The projects' responses (and refusals to respond) led ACCD to consult — beginning in late 2012 — with highly experienced outside counsel with securities expertise. Through 2013, ACCD focused increasing attention on the Jay Projects, particularly AnC Bio. ACCD continued to consult with outside counsel into 2014. In June, 2014 ACCD prohibited any further solicitation of investors for the AnC Bio Project subject to several conditions, including attorney approval of marketing materials, signatures by existing investors accepting revised disclosures, and receipt of an unqualified opinion letter from AnC Bio's counsel that all necessary disclosures were being made. ACCD also required an outside opinion letter from experienced securities counsel for the Burke Hotel project, stating that the project was complying with securities laws. The project never provided the letter.

It was against this backdrop that the Department of Financial Regulation became formally involved in the VRC in late 2014. DFR immediately began to investigate the financial aspects of the Jay Projects. In total, DFR subpoenaed and analyzed over 110 accounts with over 130,000 pages of account statements and over 100,000 transactions. DFR staff also traveled to Jay to investigate whether the Jay Projects were built as promised. DFR also quickly became involved in the VRC's review of

proposed revised offering materials for the AnC Bio and Burke Hotel projects. DFR also began receiving complaints from Jay Project investors in 2015.

The VRC ultimately approved revised offering documents for the AnC Bio project in April 2015, with the condition that all funds be held in escrow pending DFR's outside auditor's review of the project. That audit never occurred due to a lack of cooperation from the project, and \$17.5 million in investor funds remained in escrow as a result. Those funds have now been returned to AnC Bio investors.

Similarly, in July 2015 the VRC approved revised offering documents for Q Burke. By this time DFR had determined that the finances for the Burke project had been separated from the funds for the other Jay Peak Projects, which the State alleges had been freely co-mingled.¹⁸ The Burke project had already raised and spent \$35 million, and DFR's investigation confirmed that the money had been properly spent for project purposes. Accordingly, the VRC allowed the Burke project to continue raising funds, but all funds were escrowed, to be disbursed only upon a third-party construction manager's approval of each construction expense. This precaution ensured that all new capital raised was spent only on legitimate expenses. The hotel was completed in February 2016, opened in September 2016, and has operated continuously since then.

The DFR-led investigation into the Jay Projects involved extensive coordination with the Vermont Attorney General's Office and an outside forensic auditor. The investigation occupied substantial DFR staff time, as well as significant financial outlays for the forensic auditor.

One outcome of DFR's investigation was a \$5.95 million settlement with Raymond James Financial, which handled many of the Jay Project accounts.¹⁹ That settlement provided for the payment of \$4.5 million to the federal receiver to reimburse investors, \$200,000 to DFR for its investigation costs, and \$1.25 million to the General Fund as an administrative penalty.

The other major outcome of the DFR investigation was the April 2016 filing of the State's civil-enforcement case by DFR and the Attorney General against Stenger, Quiros, and various Jay Peak corporate entities.

The State's civil-enforcement case continues to involve substantial work by DFR staff, largely attorneys, in coordination with the Attorney General's Office. The State successfully opposed Quiros's motion to dismiss, and the case is currently in

¹⁸ Burke was not sued by either the SEC or the State, but is now subject to the control of the federal court via the federal receivership.

¹⁹ <http://www.dfr.vermont.gov/press-release/raymond-james-settles-administrative-enforcement-matter-dfr-595-million>

discovery. The State is soon to begin producing documents to the defendants. It is anticipated that the case will proceed through the discovery process over the course of the next year or more.

DFR was also closely involved with the SEC's parallel investigation, pursuant to a common-interest agreement. The SEC's complaint was unsealed on April 14, 2016, and the State's civil complaint was filed the same day. A DFR employee was a key witness at the preliminary injunction hearing in the federal case in Florida, and that testimony concerning the Jay Projects' financial transactions was relied upon in freezing defendants' assets and putting the projects under receivership. DFR's "spaghetti chart" was the primary exhibit to the federal judge's order granting a preliminary injunction and putting the Jay Projects under the receiver's control.

DFR has also coordinated its efforts closely with the federal receiver pursuant to a common-interest agreement, including immigration-related efforts (e.g. revising annual reports to USCIS), recovery of assets, payment of contractors, and the global settlement with Raymond James which comprises both receiver (\$145.5 million) and State (\$4.5 million) settlements. The receiver also settled potential claims against Citibank for \$13.3 million in August 2016.

Because the federal receiver is now in control of Quiros's personal assets, all assets of the corporate defendants, and the day-to-day functions of the Jay Projects, DFR's oversight role has lessened. The receiver is bound by law and court order to preserve (and, as applicable, recover) assets at issue in the federal lawsuit while it is pending, with the goal of returning creditors' assets (including investor funds).

Finally, with respect to the potential for criminal prosecution, the Attorney General determined, after consultation with the US Attorney's Office and the SEC, to defer to federal authorities in the criminal arena, due in part to the potential offenses' interstate and international character.

4. State and Federal Reporting and Regulatory Requirements

a. Application of Federal and State Securities Laws

In 1997, at the time of VRC's founding, there was some doubt nationally as to whether EB-5 investments were securities at all. Further, it was clear as a matter of federal law that, if they were securities, they were exempt from State registration and review under the National Securities Market Improvement Act of 1996 ("NSMIA").²⁰

²⁰ Pub. L. 104-290; 110 Stat. 3415.

The VRC was founded shortly after NSMIA’s passage. Among other things, NSMIA had dramatically reduced State securities regulators’ role in the so-called “private capital” market. For example, NSMIA exempted from state registration and review all “covered securities,” including all securities sold under SEC Rule 506 of Regulation D (“Reg D”) — i.e. securities sold only to investors with a federally specified level of wealth. Reg D is the federal exemption typically relied upon by EB-5 projects.²¹

Today, at the federal level, the only requirement imposed on Reg D sellers is a notice filing — the SEC does not substantively review the offerings as a general matter. Accordingly, the SEC and State securities regulators scrutinize EB-5 projects only for anti-fraud purposes, generally upon receipt of a complaint.

b. Reporting to USCIS

Since 2010, each EB-5 regional center has been required to file an annual report with USCIS detailing its economic activity over the preceding year — namely how much money a regional center’s affiliated projects have put at risk and how many jobs have been created. These annual filings are made through USCIS Form I-924A.

The VRC has filed Form I-924A every year since USCIS began requiring it. However, the Form I-924A does not assess project compliance with securities laws and the SEC does not require annual reporting by regional centers.

In early July 2016, prompted by the filing of the SEC and State fraud cases, USCIS — pursuant to 8 C.F.R. § 204.6(m)(6) — requested that the VRC provide additional information to supplement the VRC’s FY2015 Form I-924A (“the RFI”).²² Broadly speaking, the RFI sought information relating to the investment figures for the Jay Projects, in light of the allegations in the SEC and state complaints (e.g. if investor funds were misused or misappropriated, do any of the projects have a shortage of funds?). The RFI stated that if satisfactory information were not provided, USCIS could issue a notice of intent to terminate the VRC’s participation in the EB-5 program.

The VRC submitted a thorough response to the RFI on August 25, 2016.²³ Since that submission, the VRC has received no notice of intent to terminate, and USCIS has continued to approve investor petitions relating to VRC projects.

²¹ Absent an exemption under Reg. D or Reg. S (foreign investors), a project would have to comply with complex SEC regulations governing domestic public offerings.

²² See Appendix E (July 8, 2016 Request for Information).

²³ See Appendix F (August 25, 2016 Response to RFI) (redacted to protect confidential business information; exhibits omitted).

c. Statutory and Contractual Authority of the VRC

Because ACCD's enabling statute does not include any compliance or enforcement provisions relating to EB-5, ACCD used separate Project MOU's as the primary means to manage and oversee the projects. The initial version of the standard Project MOU was provided informally to ACCD by the Deputy Director of INS, the federal agency responsible for the EB-5 Program at the time.

The Project MOU's were not required by federal law, but the VRC used them because INS recommended it and they provided a means to impose project requirements. The Project MOU's changed over time as the VRC gained more understanding of the issues raised by EB-5 projects and USCIS provided greater guidance on EB-5 policy and administration.

Early VRC MOU's did not require projects to expressly attest to compliance with securities laws. They did, however, require formal written quarterly reports from projects to the VRC that detailed, among other things, "number of investors, the status of alien investor capital . . . and activity of the limited partnership in furtherance of the project."²⁴ In late 2012, the VRC responded to growing concerns that EB-5 investments might be regulated securities, and added MOU provisions requiring projects to comply with all state and federal securities laws and regulations. Projects were also required to report the status of investors' citizenship petitions. Compliance with these reporting requirements appears to have been inconsistent, however. As noted above, some VRC projects resisted providing this information.

d. State Legislative Requirements

Since May 2011, the VRC has been required to report annually on the EB-5 Special Fund's condition to the Secretary of Administration and several legislative committees. 10 V.S.A. § 21(b)(2).

The Legislature in 2016 required DFR and ACCD to promulgate EB-5 rules; DFR last year began to draft rules. *See* 10 V.S.A. § 20. Such rules would include the financial safeguards outlined in § 5 below. Depending on the Administration's decision on the VRC's future and the State's involvement with the EB-5 program (see § 6 below), DFR can finish the draft rule and formally start the rulemaking process if necessary. ACCD could similarly promulgate rules depending on the VRC's future.

²⁴ See Appendix G (Phase I MOU), at ¶ 5.

5. 2014 VRC Structural Changes: adding DFR compliance and oversight

Apart from the Project MOU's, the overall VRC governance structure has also changed over time. The 2014 MOU (Appendix D) between DFR and ACCD was signed in December 2014. It resulted from a recognition of the potential structural issues raised by having one agency responsible for screening, marketing, and monitoring for compliance with the federal requirements. The 2014 MOU splits the VRC activities between the two state entities such that ACCD focuses on the VRC's reporting requirements, including the filing of the annual report (Form I-924A) to USCIS, and on the VRC's marketing efforts. This is consistent with ACCD's overall mission of promoting economic development in the State and assisting the private sector in business and job development.

The 2014 MOU employs DFR's authority, expertise, and experience with regulatory compliance and enforcement in the financial arena. DFR, which has primary regulatory oversight of banking, insurance, and securities in Vermont (8 V.S.A. § 11), screens new potential projects for compliance with USCIS EB-5 requirements, immigration law, and State and federal securities law. DFR is also responsible for ongoing compliance oversight, including quarterly compliance visits and financial monitoring. 2014 MOU, Appendix D, at 3-4.

DFR has broad statutory powers to investigate potential State securities violations, including issuing subpoenas and conducting examinations under oath. 9 V.S.A. § 5602. DFR's regulatory charge includes investigating alleged securities-registration and fraud violations. The Department has administrative enforcement authority, with the power to issue administrative cease-and-desist orders halting wrongful conduct (*id.* § 5604), and civil enforcement authority, in conjunction with the Attorney General, to seek judicial orders enjoining such conduct. *Id.* § 5603. DFR also can impose administrative penalties or seek penalties in court. *Id.* §§ 5603, 5604 (penalty up to \$15,000 per violation). ACCD has no such regulatory or investigative authority or powers applicable to the EB-5 program.

Roughly contemporaneous with the 2014 MOU, two new DFR positions were created to do EB-5 compliance work. These two employees form the core of the EB-5 unit at DFR. They conduct the initial screening of potential new VRC projects and ongoing financial monitoring. For new projects and new phases of existing projects, DFR requires financial safeguards, such as an independent fund manager, an independent clerk-of-the-works for construction oversight, financial escrow and holdback amounts to cover contingencies, and annual independent financial audits. For example, DFR required the use of escrow accounts with holdback provisions for AnC Bio, and an independent construction manager for the Burke project, in their respective revised MOU's.

Since December 2014, active VRC-affiliated projects have also been required to report to DFR quarterly on the following:

- 1) All efforts to promote EB-5 investment in the project;
- 2) Number of new investors, their personal information, and the status of their investment;
- 3) All USCIS requests for evidence;
- 4) Copies of subscription agreements related to the sale of securities associated with the project;
- 5) Any updated or new marketing materials and marketing information relating to investment in the project;
- 6) Financial and accounting information such as trial balances;²⁵
- 7) A list of all project vendors and contractors, including all invoices and payment history;
- 8) An accounting of jobs, including payroll records where appropriate;
- 9) Any changes in names, titles, job duties, or percentage of time spent on project-related duties for key personnel of all entities directly related to the EB-5 project; and
- 10) Evidence and documentation of any material changes or updates to planned project timeline or execution.²⁶

Each quarter since 2014, DFR personnel have physically visited and inspected all EB-5 projects engaged in significant active construction. During the visits, DFR observes the status of construction and verifies that the work in progress is in line with representations made in the offering documents and in the responses to the quarterly compliance questionnaire.

6. Recommendations for the VRC and the EB-5 Program in Vermont

Given the alleged civil fraud associated with the Jay Peak Projects, it is easy to overlook the successes of the EB-5 Program in Vermont. EB-5 projects have provided significant economic development and created many jobs in Vermont, as

²⁵ A trial balance is a report listing the debit and credit balances in the project's general ledger accounts.

²⁶ See Appendix H (quarterly compliance questionnaire).

outlined in § 1(b) of this Report. DFR and ACCD both agree that, put colloquially, the State should not “throw out the baby with the bath water.” The EB-5 Program, with appropriate reforms at the federal level, should continue to be part of economic-development efforts in Vermont. It provides capital for new economic development and job creation that might not otherwise be available in the market, particularly if there is another contraction of capital availability as in 2008. ACCD and DFR recommend that the State work with the federal delegation and other stakeholders to advocate to Congress that the EB-5 Program be appropriately reformed and reauthorized.

We see four options for the Governor to consider with regard to the VRC:

- close the VRC immediately and stop all VRC activities relating to the EB-5 Program in Vermont (Option 1);
- transfer all VRC activities and responsibilities to a private entity and close the VRC (Option 2);
- continue the status quo with the VRC screening and taking on new projects and overseeing the existing ones (Option 3); and
- wind down the VRC over time, continuing to oversee existing and pending projects but not taking on any new ones (Option 4).

For the reasons set forth below, both DFR and ACCD believe the best course of action is Option 4—the State should, in an appropriate manner, wind down the VRC; regional centers for any new Vermont projects would be privately run.

Option 1

Option 1 (immediately terminate the VRC) is not legally viable. Our understanding is that USCIS will not allow a regional center to simply shut its doors if it has pending projects with investors awaiting decisions on their immigration petitions and possible return of their investments. For the VRC, there are non-Jay Peak EB-5 projects that have ongoing active investment and investors who are in the process of securing their green cards. Some of the Jay Project investors are also still in the process of securing their green cards. The green-card process is increasingly long. For example, the USCIS Ombudsman reported in June 2017 that Chinese investors would wait at least 10 years for a visa number, which is necessary for an investor to obtain a conditional green card. USCIS also recently clarified that terminating the designation of a regional center before sponsored investors achieve conditional status will preclude their immigration. Attempting to simply shut down the VRC

could result in an adverse USCIS action against the VRC or investors, and/or other legal issues with investors.

Option 2

Option 2 (transfer VRC's activities and obligations) likely would not pass legal muster either. It is not possible to transfer away all obligations of the VRC to another entity simply by agreement. At a minimum, even assuming the VRC could find a willing entity to take on its role and obligations as the regional center, USCIS would need to approve this arrangement, and it is very doubtful this would happen. Our understanding is that USCIS will not allow the VRC to transfer its obligations to existing investors to another entity by contract.

Option 3

Option 3 (continue the status quo, taking on new projects and overseeing existing projects) is legally viable, but we do not recommend it.

Fundamentally, we believe operating a regional center is not a function that is best performed by the State and the need for a State-run regional center has passed. When the VRC was formed in the late 1990's, there were very few regional centers. Early on, the VRC filled a need to provide a regional center for projects in Vermont, without which the projects might not have occurred. Now, the regional centers number over 800 nationally and are relatively easy to establish. The vast majority of these regional centers are private entities, and they compete intensely for investors.

Although EB-5 projects continue to be successful with the VRC, even after the Jay Peak experience, we are confident that appropriate EB-5 projects will continue to be done in Vermont without the VRC.²⁷ The costs may increase somewhat for projects since the VRC does not charge as much as a typical private regional center, but that cost can be built into the project by the developer, and the higher private cost structure does not appear to have impeded robust EB-5 development in other states.

Administering the VRC requires substantial State resources and adds significant complexities for projects because of government involvement. Currently, the State is dedicating staff and resources in multiple agencies dealing with EB-5 issues related to the VRC.²⁸ Section 2 details the outlays over time, but understates them since it

²⁷ As noted above, at least one sizable EB-5 project has already been done via a private regional center in Vermont.

²⁸ Recently, the VRC and a number of current and former state officials were sued by investors in two of the Jay Peak Projects based on alleged actions relating to the VRC. *See Sutton v. The Vermont Regional Center, et al.*, Dkt No. 100-5-17 Lecv. The Defendants intend to vigorously defend

does not include DFR and ACCD attorney time spent on the program, or any time spent by the DFR Commissioner or the ACCD Secretary. State resources could be redirected to other core governmental functions.

Further, the State is subject to the Access to Public Records Act and must disclose records in State files with limited exceptions. EB-5 projects, on the other hand, often have legitimate need for privacy because of personal investor information and proprietary financial and strategic data. The two spheres do not fit together well in this regard.

The State-administered VRC also makes it difficult for the State to separate from unsuccessful VRC-affiliated projects, particularly after the project has accepted investors. State agencies tend to spend an inordinate amount of time dealing with such projects. This, again, is time and resources better spent on other more productive efforts.

Finally, the EB-5 Program's future is uncertain at the federal level. Congress has extended the EB-5 Program on a temporary basis several times in recent years and has not enacted necessary reforms such as stricter USCIS oversight of offerings, audits, and reforms to the TEA-designation process to prevent gerrymandering. As noted above, there is a current proposal to end the EB-5 Program entirely. The State can and should work with the federal delegation and stakeholders to convince Congress to reform the EB-5 Program, but we also should be wary of long-term State resource commitments to a program that may well be ended by the federal government.

For all of these reasons, we find Option 3 is not a desirable outcome.

Option 4

We believe Option 4 (wind down the VRC over time, continue to oversee existing and pending projects but not take on new projects) makes the most sense. It would allow the State to honor its commitments to existing EB-5 projects, but recognizes that operating a regional center is not a function that is best performed by the State, and that the State does not need to operate a regional center to have the advantages of EB-5 projects in Vermont.

Option 4 would put the State on a path to close the VRC and remove the inherent downsides, outlined above, with its continued operation. DFR would continue to monitor existing and pending projects and ACCD and DFR would file annual reports and interface with USCIS as needed.

against the allegations, but the suit points up the possibility of such actions related to the VRC's operations.

We believe new EB-5 projects would continue to occur in Vermont even without the VRC. We expect private entities would provide the regional center services necessary for new EB-5 projects in Vermont, and the State would continue to enjoy the benefits of such economic development and job creation. As for any new projects, the State would provide traditional regulatory oversight (for example with DFR's anti-fraud authority for securities offerings, and the Attorney General's authority to enforce consumer protection laws).

Winding down the VRC over time also would provide stability to existing and pending VRC EB-5 projects, and help protect their investors as well as the local contractors projects employ. As noted above, the VRC is obligated under USCIS guidance to provide regional center services for the existing VRC projects until those projects finish and investors receive a determination on their immigration status. We understand that this process may take up to 10 years. During this time, the VRC would focus exclusively on overseeing the existing projects to their conclusion.²⁹ Under this scenario, the VRC could also consult on an informal basis with other regional centers and Vermont businesses considering using EB-5.

In sum, Option 4 (wind down) recognizes that operating a regional center is a function not best performed by the State, and that a State-run regional center is no longer needed for EB-5 program success, but also honors the VRC's commitments to existing projects. Under this option, the State would continue to provide its regional center services for the existing and pending EB-5 projects. For future EB-5 projects, the State would provide its traditional regulatory and compliance oversight (e.g., securities registration, fraud enforcement) but will leave the regional center activities to the private sector.

DFR and ACCD recommend the following:

- Adopt Option 4 —wind down the VRC, oversee existing and pending EB-5 projects, including possibly one new phase for an existing project; the private sector would provide the regional center services for any new EB-5 projects in the State.
- Work with the federal delegation and other stakeholders to advocate to Congress that the EB-5 Program be appropriately reformed and renewed.

²⁹ As part of Option 4, ACCD and DFR would amend the 2014 MOU to reflect the wind-down of the VRC and that the regional center would not accept new projects.

APPENDIX A: VERMONT REGIONAL CENTER PROJECTS

Jay Peak Related Projects

1. December 2006 MOU: Jay Peak Hotel Suites L.P. (“Phase I” or “Tram Haus Lodge”)

a. Project Description

This project involved the sale of 35 limited partnership interests in the Jay Peak Hotel Suites L.P. With the investors’ funds, the limited partnership would acquire land from Jay Peak, Inc. comprising approximately .48 acres and construct six-floor building (the “Tram Haus”) comprising: (1) a new hotel containing a mix of 57 one, two and three-bedroom hotel suites owned by the Phase I limited partnership; and (2) a commercial unit and a service unit to provide guest services, food and beverage and recreation facilities owned by Jay Peak, Inc.

b. Status of the Capital Raise

Became fully subscribed after raising \$17.5 million between December 2006 and May 2008.

c. Status of Construction

Hotel completed and operating since December 18, 2009.

d. Immigration Status of Investors¹

Total Investors: 35 investors
I-526’s approved: 35 investors
I-829’s approved: 34 investors

e. Repayment to Investors

Jay Peak converted the investors’ equity interest into debt in 2014. Jay Peak made a number of debt payments to investors prior to the civil fraud cases and the remaining payments will come from the receiver’s Raymond James settlement.

2. July 2008 MOU: Jay Peak Hotel Suites Phase II L.P. (“Phase II” or “Hotel Jay”)

a. Project Description

This project involved the sale of 150 limited partnership interests in the Jay Peak Hotel Suites Phase II L.P. The limited partnership would acquire land from Jay Peak, Inc.

¹ The I-526 approval is a conditional-residency approval, under which the investor (and their immediate family members) are allowed to stay in the US pending the removal of conditions, which happens when the I-829 is approved.

and construct a multi-story building (the “Hotel Jay”) comprising: (1) a new hotel containing 120 one, two and three bedroom suites to be owned by the Phase II limited partnership; (2) a commercial unit consisting of spa facilities, conference center, restaurants and retail owned by Jay Peak, Inc.; and (3) constructing a separate office building to contain administrative offices, grocery and a deli.

Additionally, the limited partnership would construct: (1) a water park; (2) a golf club house; (3) an indoor ice rink arena; and (4) a bowling center.

b. Status of the Capital Raise

Became fully subscribed after raising \$75 million between March 2008 and January 2011.

c. Status of Construction

Hotel and ancillary projects are operating and are claimed to be complete. However, DFR’s investigation determined certain aspects of the project were allegedly never built or built contrary to representations made in the offering materials (i.e. bowling center and spa were not built, and the number and quality of rooms in Hotel Jay is less than promised).

d. Immigration Status of Investors

Total Investors: 150 investors
I-526’s approved: 145 investors
I-829’s approved: 139 investors

e. Repayment to Investors

None

3. **July 2010 MOU: Jay Peak Penthouse Suites L.P. (“Phase III” or “Penthouse Suites”)**

a. Project Description

This project involved the sale of 65 limited partnership interests in the Jay Peak Penthouse Suites L.P. The limited partnership would construct a 55-unit “penthouse suites” hotel on top of the Phase II Hotel Jay and build a Mt Activity Center.

b. Status of the Capital Raise

Became fully subscribed after raising \$32.5 million between July 2010 and October 2012.

c. Status of Construction

Hotel and ancillary projects claim to be complete and operating, however, DFR's investigation determined certain aspects of the project were allegedly never built or built improperly (i.e. number of rooms and quality of the rooms on the penthouse floor).

d. Immigration Status of Investors

Total Investors: 65 investors
I-526's approved: 65 investors
I-829's approved: 58 investors

e. Repayment to Investors

None

4. **November 2010 MOU: Jay Peak Golf and Mountain Suites L.P. ("Golf and Mountain" or "Phase IV")**

a. Project Description

This project involved the sale of 90 limited partnership interests in the Jay Peak Golf and Mountain Suites L.P. The limited partnership would construct golf cottage duplexes, wedding chapel, other facilities at the Jay Peak Resort.

b. Status of the Capital Raise

Became fully subscribed after raising \$45 million between December 2010 and November 2011.

c. Status of Construction

Project complete and operating.

d. Immigration Status of Investors

Total Investors: 90 investors
I-526's approved: 90 investors
I-829's approved: 61 investors

e. Repayment to Investors

None

5. **November 2010 MOU: Jay Peak Lodge and Townhouses L.P. ("Lodge and Townhouses" or "Phase V")**

a. Project Description

This project involved the sale of 90 limited partnership interests in the Jay Peak Lodge and Townhouses L.P. The limited partnership would construct 30 vacation rental townhouses, 90 vacation rental cottages, and café at the Jay Peak Resort.

b. Status of the Capital Raise

Became fully subscribed after raising \$45 million between May 2011 and November 2012.

c. Status of Construction

Project complete and operating.

d. Immigration Status of Investors

Total Investors: 90 investors
I-526's approved: 88 investors
I-829's approved: 9 investors

e. Repayment to Investors

None

6. **November 2010 MOU:** Jay Peak Hotel Suites Stateside L.P. ("Stateside" or "Stateside Phase VI")

a. Project Description

This project involved the sale of 134 limited partnership interests in the Jay Peak Hotel Suites Stateside L.P. The limited partnership would construct 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and medical center at the Jay Peak Resort.

b. Status of the Capital Raise

Became fully subscribed after raising \$67 million between October 2011 and December 2012.

c. Status of Construction

The Stateside Hotel is complete and operating, however, the reminder of the project was never finished. The federal receiver's Raymond James settlement will fund completion of the 84 cottages and recreation center. Further, the federal receiver will construct artificial turf fields in place of the medical center.

d. Immigration Status of Investors

Total Investors: 134 investors

I-526's approved: 132 investors

I-829's approved: 0 investors

e. Repayment to Investors

None

7. **October 2009 & October 2012 MOUs: Jay Peak Biomedical Research Park L.P. ("AnC Bio" or "Phase VII")**

a. Project Description

This project involved the sale of 220 limited partnership interests in the Jay Peak Biomedical Research Park L.P. The limited partnership would construct a biomedical facility in Newport, Vermont as well as purchase certain intellectual property from a South Korean entity.

b. Status of the Capital Raise

Raised approximately \$83M from 166 investors since November 2012.

c. Status of Construction

Site preparation and groundbreaking, but no construction ever commenced.

d. Immigration Status of Investors

Total Investors: 166 investors

I-526's approved: 83 investors

I-829's approved: 0 investors

e. Repayment to Investors

All 166 investors either were refunded their \$500,000 from the DFR's April 2015 escrow requirements, or will be refunded by the federal receiver's Raymond James settlement.

8. **November 2012 & June 2013 MOUs: Burke Mountain Resort, Hotel and Conference Center. L.P. ("Burke" or "Burke Hotel")**

a. Project Description

The Burke project involved the sale of 196 limited partnership interests in the Burke Mountain Resort and Conference Center L.P. The limited partnership would acquire a parcel of land from the Burke Mountain Resort LLC in order to construct two five-story buildings connected by a “hub” and containing; (1) a new hotel with 112 rooms and suites that would be owned by the Burke limited partnership; (2) a commercial condominium unit located on the lower floors that would be owned by Burke Mountain Resort LLC; and (3) a retail condominium unit located on the lower floors that would also be owned by Burke Mountain Resort LLC.

The Burke project also consisted of a number of ancillary projects to be constructed on land owned by the Burke Mountain Resort LLC and leased to the limited partnership, including a: (1) tennis complex; (2) indoor aquatic center; and (3) expanding mountain biking facilities.

b. Status of the Capital Raise

Raised approximately \$58 million from 116 investors.

c. Status of Construction

The Burke hotel is complete and operating, however, the ancillary projects were never constructed. The federal receiver plans on completing such projects.

d. Immigration Status of Investors

Total Investors: 116 investors

I-526's approved: 46 investors

I-829's approved: 0 investors

e. Repayment to Investors

None

NON-JAY PEAK RELATED PROJECTS

9. **January 2007 MOU: EB-5 America – Sugarbush Fund, L.P.**

a. Project Description

Sugarbush Resort in Warren, Vermont was “distress business” project which began raising EB-5 capital in January 2007. The project was successful in attracting EB-5 investors as part of a project to build a new hotel, three new base lodges, and expand snowmaking at the Sugarbush Mountain Resort.

b. Status of the Capital Raise

Complete.

c. Status of Construction

The project broke ground in 2009 and construction was completed after several phases in 2013.

10. October 2009 MOU: Vermont Opportunity Partners I, L.P. (Country Home Products)

a. Project Description

Country Home Products in Vergennes, Vermont was a “distressed business” that manufactures various agriculture and forest products for home and commercial use. The company was successful in attracting EB-5 investors to do a manufacturing plant and equipment upgrades as well as engineering and manufacturing to improve product lines. The project retained jobs at the manufacturing facility in Vermont, which is still in operation.

b. Status of the Capital Raise

Complete.

c. Status of Construction

The elements of the project were completed.

11. May 2010 MOU: Seldon Clean Water Products (Asia) L.P.

a. Project Description

Seldon sought to develop water filtration technology. In 2010, it began soliciting EB-5 investment under a private placement memorandum.

Although Seldon ceased operations in September 2015, the relevant EB-5 investments were made and the requisite jobs were created before this date.

b. Status of the Capital Raise

Successful in attracting EB-5 investors. Seldon raised EB-5 capital and by December 1, 2014 approximately 96% of these funds had been deployed for project purposes.

c. Status of Construction

The elements of the project were completed.

12. July 2010 MOU: EB-5 American Dream Fund I LLC & EB-5 American Dream Program

a. Project Description

Proposed to build up to eight resort-style retirement centers in Vermont, however, project MOU was cancelled by ACCD in March 2013 after discrepancies were found in application materials.

b. Status of the Capital Raise

Never commenced.

c. Status of Construction

Never commenced.

13. May 2012 MOU: Taurus Quechee Corporation

d. Project Description

Development of residential homes in Quechee. The Vermont Regional Center separated from the project during the Summer of 2016.

e. Status of the Capital Raise

Never commenced.

f. Status of Construction

Never commenced.

14. May 2013 MOU: Von Trapp Enterprises L.P.

a. Project Description

The Trapp project initially consisted of an investment in a “distressed business.” The business consisted of the existing hotel, with plans to construct a state of the art brewery for the Trapp Family label and an attached “Beer Hall” theme restaurant.

The construction costs were largely raised through EB-5 investment with the Trapp Family developer contributing as well. With these funds, the developer constructed the brewery and restaurant, which are operational and open.

b. Status of the Capital Raise

Complete.

c. Status of Construction

Complete.

15. May 2014 MOU: Stowe Aviation LLC

a. Project Description

The SA project was located at the Morrisville-Stowe State Airport in Stowe, Vermont and included construction of a new terminal along with new and expanded aircraft hangars, a U.S. Immigration and Customs clearance service, a flight academy, an aircraft maintenance and management facility, a restaurant, and a charter service.

b. Status

MOU was terminated. Project may be proceeding with another regional center.

16. September 2014 MOU: Mount Snow

a. Project Description

This project has two phases. Phase one is the Westlake Reservoir, a snow-making pond with a capacity of 120 million gallons, and associated piping and pump-houses to update and improve the snow-making capabilities of Mt. Snow. This phase also includes trail upgrades and expansion and a new ski lift.

Phase two is the construction of a new, three-story ski lodge consisting of 36,000 square feet and a restaurant, cafeteria and bars with seating for over 600 people. It will also include a retail and convenience store and sales outlet for lift tickets and rentals.

Both phases will be financed with a combination of EB-5 capital and owner equity.

b. Status of the Capital Raise

Complete.

c. Status of Construction

Phase one is complete and the ground breaking for phase two was held in June 2017.

17. January 2015 MOU: South Face Village (“SFV”)

a. Project Description

The SFV project is located adjacent to the Okemo Mountain Resort in Ludlow, Vermont. The project includes the development of 20 duplex units, 56 condominium units, 10 single family homes, as well as construction of a base lodge, a ski lift and trails, and related infrastructure, such as roads, water, and sewer.

The anticipated sources of funding are diverse but include EB-5 capital.

b. Status of the Capital Raise

Incomplete.

c. Status of Construction

The ski lift and first set of condominium units have been constructed using owners’ equity. The first set of condominium units have been completely sold and the developer is working on selling and constructing the next set.

ACCD State Funded Expenditures for EB-5 Program (GF 10000, IDT 21500)

FY	MOC	Rollup	Total
FY2008	4OE	Advertising	540.68
		Printing, Binding, Photocopying	288.05
		Trade Show & Events	1,475.00
		Travel	1,649.74
Y2008 Total			3,953.47
FY2009	4OE	Advertising	2,500.00
		Client Meetings; food	5,641.16
		Postage	97.61
		Printing, Binding, Photocopying	335.12
		Trade Show & Events	1,049.00
		Travel	5,460.65
Y2009 Total			15,083.54
FY2010	3PS	Contracted 3rd Party - Other	8,000.00
	4OE	Advertising	3,000.00
		Client Meetings; food	58.32
		Postage	226.53
		Printing, Binding, Photocopying	50.00
		Telecom - all services	64.13
		Trade Show & Events	6,684.01
		Travel	22,886.67
Y2010 Total			40,969.66
FY2011	3PS	Contracted 3rd Party - Other	1,320.00
	4OE	IT Hardware & Software Equipment	44.45
		Postage	41.87
		Printing, Binding, Photocopying	40.00
		Telecom - all services	1,702.73
		Trade Show & Events	8,334.28
		Travel	25,355.59
		Y2011 Total	
FY2012	4OE	DII Inter Svc Allocated Fee	413.00
		Postage	35.46
		Trade Show & Events	645.00
		Travel	1,610.60
Y2012 Total			2,704.06
FY2013	1S&F	Salary & Fringe Rollup	11,465.59
	2PS	Worker's Compensation Insurance	460.00
	4OE	Advertising	3,257.94
		Insurance - General Liability & Other	421.00
		Postage	30.94
		Printing, Binding, Photocopying	781.19
		Subscriptions & Other Info Serv	5,949.26
		Supplies - office, equipment, furniture	26.49
		Telecom - all services	55.46
		Trade Show & Events	2,605.93
		Travel	20,069.92
		Y2013 Total	
FY2014	1S&F	Salary & Fringe Rollup	89,037.10
	4OE	Advertising	153.91
		Client Meetings; food	590.38
		Postage	102.36
		Printing, Binding, Photocopying	808.67
		Rental Equipment, Vehicles & Other	100.00
		Rental Land&Bldgs-Office & Non-Office	200.00
		Subscriptions & Other Info Serv	39.90
		Telecom - all services	26.58
		Trade Show & Events	2,342.08
		Travel	21,441.94
		Y2014 Total	
FY2015	1S&F	Salary & Fringe Rollup	92,950.99
	4OE	Advertising	174.00
		Postage	62.95
		Printing, Binding, Photocopying	1,080.47
		Subscriptions & Other Info Serv	99.25
		Trade Show & Events	745.00
		Travel	7,100.94
Y2015 Total			102,213.60
FY2016	1S&F	Salary & Fringe Rollup	82,995.38
	3PS	Contracted 3rd Party - Other	55,110.78
	4OE	Advertising	750.00
		Postage	19.99
		Supplies - office, equipment, furniture	256.88
		Trade Show & Events	700.00
		Travel	5,438.56
Y2016 Total			145,271.59
FY2017	1S&F	Salary & Fringe Rollup	11,839.89
	3PS	Contr & 3rd Party - Legal	46,073.50
	4OE	DII Inter Svc Cost - Telephone	106.84
		Postage	21.99
		Trade Show & Events	600.00
		Travel	3,989.06
Y2017 Total			62,631.28
Grand Total			569,632.76

ACCD EB-5 Special Fund Expenditures for EB-5 Program (SF 21919)

FY	MOC	Rollup	Total
FY2012	4OE	Printing, Binding, Photocopying	3.21
		Telecom - all services	115.79
		Trade Show & Events	312.53
		Travel	4,608.47
FY2012 Total			5,040.00
FY2013	4OE	Travel	1,500.00
FY2013 Total			1,500.00
FY2014	4OE	Subscriptions & Other Info Serv	358.65
		Travel	4,661.18
FY2014 Total			5,019.83
FY2015	3PS	Contracted 3rd Party - Financial	33,456.62
	4OE	Advertising	15,000.00
		Postage	169.13
		Supplies - office, equipment, furniture	20.82
		Telecom - all services	77.45
		Trade Show & Events	6,421.45
		Travel	8,575.11
FY2015 Total			63,720.58
FY2016	3PS	Contracted 3rd Party - Other	54,896.82
	4OE	Advertising	14,074.99
		Postage	57.87
		Printing, Binding, Photocopying	40.59
		Sponsorships	17,000.00
		Subscriptions & Other Info Serv	675.69
		Trade Show & Events	9,642.07
Travel	0.00		
FY2016 Total			96,388.03
FY2017	3PS	Contr & 3rd Party - Legal	7,322.80
	4OE	Client Meetings; food	28.87
		Sponsorships	14,180.00
		Trade Show & Events	4,333.93
		Travel	6,449.84
FY2017 Total			32,315.44
Grand Total			203,983.88

Note: EB-5 Receipts collected from Project Fees as per State Statute.

DFR State Funded Expenditures for EB-5 (Securities Fund)

Sum of Amount		
Years	Account Descr	Total
2015	Salary	26041.6
	Contr & 3rd Party - Financial	67184.5
	Other Purchased Services	6279.37
2015 Total		99505.47
2016	Salary	131281.9
	Contr & 3rd Party - Financial	115970
	Other Contr and 3rd Pty Serv	71273
	Travel-Outst-Auto Mileage-Emp	105.84
	Travel-Outst-Incidentals-Emp	331
	Travel-Outst-Lodging-Emp	1693.32
	Travel-Outst-Meals-Emp	202
	Travel-Outst-Other Trans-Emp	767.2
2016 Total		321624.26
2017	Salary	60121.4
	TSF to AG	54386.46
2017 Total		114507.86
Grand Total		535637.59

MEMORANDUM OF UNDERSTANDING
BETWEEN
STATE OF VERMONT
AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT
AND
STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

This Memorandum of Understanding ("Agreement") is made and entered into on December 22, 2014, by and between:

State of Vermont Agency of Commerce and Community Development,
and its successors and assigns ("ACCD"), and

State of Vermont Department of Financial Regulation, and its
successors and assigns ("DFR").

WHEREAS

ACCD, a governmental unit of the State of Vermont, is charged with enhancing the Vermont business climate; marketing Vermont to businesses and individuals; and facilitating, promoting, and creating business opportunities within Vermont to contribute to the economic viability and growth of the state;

DFR, a governmental unit of the State of Vermont, is statutorily charged with supervising organizations that offer financial services and products to ensure the solvency, liquidity, stability and efficiency of all such organizations; protecting consumers against certain unfair and unlawful business practices; promoting reasonable and orderly competition; encouraging the development, expansion and availability of financial services and products advantageous to the public welfare; and maintaining close cooperation with other supervisory authorities ("DFR's Mission");

ACCD is an approved and designated Regional Center recognized by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services ("USCIS") in accordance with the Immigrant Investor Pilot Program pursuant to section 203(b)(5) of the Immigration and Nationality Act, as amended, the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, section 610, as amended, and all applicable regulations promulgated thereunder, (collectively, the "Pilot Program law");

Initial designation as a Regional Center was made in a letter dated June 26, 1997, to Howard Dean, M.D., Governor of the State of Vermont from legacy U.S. Immigration and Naturalization Service (INS), informing him of the ACCD's designation as a Regional Center; reaffirmation of ACCD's Regional Center was given by USCIS in a letter dated June 11, 2007 to Kevin L. Dorn, secretary of ACCD; and the ACCD Regional Center designation was amended and approved for EB-5 investment across a wider range of business sectors by USCIS in a letter dated October 6, 2009 to Kevin L. Dorn, secretary of ACCD;

As a USCIS approved and designated Regional Center within the Immigrant Investor Pilot Program, ACCD is responsible for: (i) actively marketing and promoting the Regional Center as an attractive option for development and foreign investment ("Marketing Activities"); (ii) approving developments that apply for designation as a Regional Center project ("Project Approval"); and (iii) on-going monitoring of approved Regional Center projects to assure compliance with USCIS EB-5 regulations, U.S. immigration laws and regulations and federal and state securities laws ("On-Going Compliance");

ACCD has the personnel, capacity and expertise to effectively carry out the Marketing Activities, and believes the Regional Center would benefit operationally, and obtain a competitive advantage by enlisting the assistance of personnel, capacity and expertise of DFR to carry out the Project Approval and On-Going Compliance functions;

DFR has agreed to assist ACCD in carrying out the Project Approval and On-Going Compliance functions as these functions are within DFR's Mission and DFR has the available resources to effectively carry out these functions; and

NOW, THEREFORE, in consideration of the mutual agreements, and representations set forth herein, the parties agree as follows:

1. Relationship with USCIS.

- a. ACCD shall retain all reporting responsibilities with USCIS including: (i) remaining the principle point of contact with USCIS on all Regional Center matters; and (ii) maintaining responsibility for the annual completion and filing of the Form I-924A.
- b. ACCD Secretary shall remain a Principal Representative and DFR Commissioner shall be added as a Principal Representative.
- c. ACCD General Counsel and EB-5 Regional Center Director shall remain the Principal Administrators.

- d. DFR shall cooperate in assisting ACCD with fulfilling its USCIS reporting obligations by providing or obtaining information within its control.

2. Marketing Activities.

- a. ACCD shall conduct all Marketing Activities and fulfill any USCIS requirements pertaining to the promotion of the Regional Center.
- b. DFR shall assist ACCD with Marketing Activities when requested and if feasible.
- c. Any marketing materials that describe DFR and/or DFR's Regional Center functions shall be approved by both ACCD and DFR prior to dissemination.

3. Project Approval.

- a. Upon learning of a prospective Regional Center project, ACCD shall promptly inform DFR and as soon as practical obtain a completed preliminary due diligence questionnaire (to be provided by DFR) from the principals of the prospective Regional Center project.
- b. ACCD shall promptly forward all materials related to a project seeking Regional Center approval to DFR for review and consideration.
- c. DFR shall review the application for compliance with USCIS EB-5 regulations, U.S. immigration laws and regulations and federal and state securities laws and make a final determination to approve or deny the application.
- d. If an application is approved, then ACCD and DFR shall work with the project's principals to develop a memorandum of understanding that will govern the parties' relationship through completion of the project (the "Project MOU").

4. On-Going Compliance.

- a. DFR shall be responsible for conducting On-Going Compliance of an approved project. Such On-Going Compliance shall include, but not be limited to:
 - i. Quarterly visits to project sites to monitor and verify the representations made by the project's principals regarding the development;

- ii. On-going monitoring of Project to ensure compliance with MOU covenants;
- iii. Regularly scheduled meetings with project principals regarding updating on the progress of the development;
- iv. Compiling the name, date of birth, petition receipt number, and alien registration number (if one has been assigned by USCIS) of each principal alien investor who has made an investment and has filed an I-526 Petition with USCIS, specifying whether: (i) the petition was filed; (ii) approved; (iii) denied; or (iv) withdrawn by the petitioner, together with the date(s) of such event(s);
- v. Compiling the total number of visas represented in each case for the participating principal alien investor identified, plus his/her dependents (spouse and children) for whom immigrant status is sought or has been granted;
- vi. Compiling the country of nationality of each alien investor who has made an investment and filed an I-526 petition with USCIS;
- vii. Compiling the U.S. city and state of residence (or intended residence) of each alien investor who has made an investment and filed an I-526 petition with USCIS;
- viii. Compiling the following information for each alien investor: (i) the date(s) of deposit(s) into escrow; (ii) date(s) of investment(s) in the commercial enterprise; (iii) the amount(s) of investment(s) in the commercial enterprise; and (iv) the date(s), nature, and amount(s) of any payment/remuneration/profit/return on investment made to alien investors by the new commercial enterprise and/or project from when the investment was initiated to the present;
- ix. Compiling a list of each of the target industry categories of business activity within the Vermont EB-5 Regional Center that have received alien investors' capital, and in what aggregate amounts;
- x. Compiling a list of each of the target industry categories of business activity within the geographic boundaries of the Vermont EB-5 Regional Center that have received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of domestic investment capital;
- xi. Compiling the following information for the total investor capital (alien and domestic), identifying: (i) the name and address of each

“direct” job creating commercial enterprise; (ii) the industry category for each indirect job creating investment activity;

- xii. Compiling the total aggregate number of approved EB-5 alien investor I-526 petitions per each federal fiscal year to date made through the Vermont EB-5 Regional Center;
- xiii. Compiling the total aggregate number of approved EB-5 alien investor I-829 petitions per each federal fiscal year to date through the Vermont EB-5 Regional Center; and
- xiv. Compiling the total aggregate sum of EB-5 alien capital invested through Regional Center for each federal fiscal year to date since your inception.

5. Communication between ACCD and DFR.

- a. ACCD and DFR agree to conduct meetings, either in person or by telephone/teleconference, not less frequently than every three months commencing on the Effective Date (“Quarterly Meetings”).
- b. ACCD and DFR agree to promptly inform the other if one has knowledge of a material change to a project application, and/or suspicious activity, potential or actual securities violation(s), or fraud specific to a project or any activities related to the Regional Center.
- c. DFR shall employ best efforts to inform ACCD of the time and date of the project quarterly visits and ACCD may attend DFR scheduled quarterly visits if it so chooses.

6. Investor Relations and Formal Complaints.

- a. ACCD shall be responsible for fielding and responding to inquiries from investors or prospective investors or their respective attorneys.
- b. DFR shall provide ACCD with a complaint form that investors may use to lodge a formal complaint against a project or its principals.
- c. Upon receiving a completed formal complaint, ACCD shall promptly forward the complaint to DFR.
- d. DFR shall be solely responsible for investigating the complaint’s allegations and determining whether such allegations warrant the filing of administrative or civil charges and/or referral of the matter to another regulatory or law enforcement agency.

7. Revoking a Project's Regional Center Designation.

- a. DFR shall make the final determination, after required notice to the project and discussion with ACCD, as to whether a project's MOU should be revoked due to non-compliance with the Project MOU, USCIS EB-5 regulations, U.S. immigration laws and regulations and federal and state securities laws.

8. Communication between media outlets and ACCD and DFR.

- a. If ACCD or DFR receives a request for comment or information from a media outlet regarding the operations of the Regional Center, the party receiving such a request shall confer with the other party before providing comment or information.
- b. If ACCD or DFR receives an interview request from a media outlet regarding the operations of the Regional Center, a representative from both ACCD and DFR shall participate, if possible.

9. Fees and Cost of the Regional Center.

- a. ACCD and DFR shall develop a fee schedule that is due from a Regional Center project to offset the costs of the Regional Center; such fee schedule shall balance the competitiveness of the EB-5 program with the financial burden of operating the Regional Center; such fee schedule shall be re-examined by ACCD and DFR on the anniversary of the Effective Date.
- b. DFR shall be solely responsible for the expense of DFR Regional Center personnel, both current and to-be-hired, charged with carrying out Project Approval and On-Going Compliance functions commencing on the Effective Date through fiscal year 2016.
- c. DFR's reasonable travel, third party vendor and third party professional expenses relating to the operation of the Regional Center shall be reimbursed by ACCD through Regional Center fees.
- d. Notice filing fees due to DFR under state and federal securities laws shall be separate and apart from EB-5 fee schedule and DFR shall retain all such fees.

10. Approval by USCIS.

- a. ACCD shall use its best efforts to have this Agreement approved by USCIS and effectuate any necessary amendments to the current Regional Center designation.

- b. DFR shall cooperate with ACCD to obtain USCIS approval and effectuate the necessary Regional Center designation amendments.
- c. Effectiveness of this Agreement is subject to and conditioned upon approval by USCIS (the "Effective Date").

11. Miscellaneous.

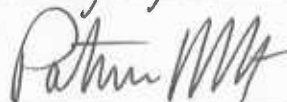
- a. Immigration Filings. DFR shall not have any obligations or responsibilities as to I-526, I-829, I-924, I-924A, G-28 or other USCIS required filings.
- b. Regulatory & Law Enforcement Communications. Communications with another regulatory or law enforcement agency shall be fielded by DFR. DFR shall update ACCD Principal Representative and Principal Administrators unless otherwise prohibited by law.
- c. Term. This Agreement in its present form or as modified shall be effective as of the Effective Date and shall remain in effect for two years. This Agreement may be extended by the mutual written agreement of the parties. Prior to the expiration of the agreement the parties shall meet to negotiate and execute a successor agreement. In the event a successor agreement is not in place when this agreement is due to expire, this agreement will remain in effect until a successor agreement is concluded.
- d. Modification. During the term of the Agreement, either party that is a signatory to this Agreement may submit a written request to amend or modify this memorandum. When such a request is made, the parties shall meet without unnecessary delay to consider the proposed amendment.
- e. Change in Law. Any provision in this Agreement may be rendered null and void by changes in federal or state law that prevent either or both parties from fulfilling the terms of the agreement. If this circumstance should arise, each party agrees to promptly notify the other party.
- f. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Vermont.

[Remainder of Page Intentionally Left Blank]

The parties have executed this Agreement in duplicate originals as of the date of their signatures affixed below.

**State of Vermont
Agency of Commerce and Community
Development**

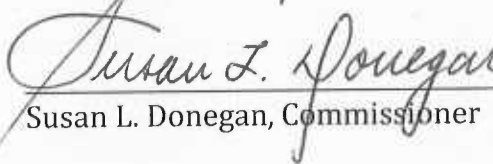
Dated: 12/22/14



Patricia Moulton, Secretary

**State of Vermont
Department of Financial Regulation**

Dated: 12/22/14



Susan L. Donegan, Commissioner

Form I-924A, Supplement to Form I-924; Request for Information

I. Background

Vermont Agency of Commerce and Community Development (VACCD) (“the Regional Center”) applied for designation as a regional center on June 26, 1997 pursuant to section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395.¹ On June 11, 2007, USCIS designated VACCD as a regional center and authorized its participation in the Immigrant Investor Program (the “Program”).

According to 8 C.F.R. § 204.6(m)(6), regional centers must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. The form that is used to demonstrate a regional center’s continued eligibility for regional center designation is the Form I-924A, Supplement to Form I-924 (“Form I-924A”).

On December 24, 2015, the Regional Center submitted the Form I-924A for fiscal year 2015 (RCW1536353984).

In the course of reviewing your FY 2015 I-924A and through publicly available information which has come out since that form was filed, issues have come to our attention that require additional information or evidence in order to demonstrate that your Regional Center is continuing to promote economic growth pursuant to 8 C.F.R. § 204.6(m)(6), including the ability to effectively administer the Regional Center.

We have reviewed the April 12, 2016 complaint² filed by the U.S. Securities and Exchange Commission (the “SEC complaint”) and the April 14, 2016 complaint³ filed by the State of Vermont (the “Vermont complaint”), regarding activities relating to the Regional Center. The 17 defendants in each complaint are:

¹ Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012); and section 575 of Pub. L. No. 114-113 (2015) (hereinafter “Appropriations Act”).

² See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>.

³ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>.

Ariel Quiros; William Stenger; Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites, L.P.; Jay Peak Hotel Suites Phase II, L.P.; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, L.P.; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites, L.P.; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses, L.P.; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside, L.P.; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park, L.P.; and ANC Bio Vermont GP Services, LLC.⁴

The SEC complaint alleges that “among other things, Quiros, Stenger, and the companies they run that have overseen the development and construction of the Jay Peak resort have misused more than \$200 million – more than half of all money raised by investors.”⁵ The Vermont complaint notes that “since 2008, Quiros has misappropriated at least \$50 million of investor funds to, among other things: (1) purchase Jay Peak Resort; (2) purchase Burke Mountain Resort; (3) back a personal line of credit to pay his personal income taxes; (4) pay taxes for an unrelated company Quiros owns; and (5) purchase a luxury condominium in Trump Place New York. Quiros also improperly used investor funds to pay for margin loan interest and fees (\$2.5 million) and to pay down and off margin loan debts.”⁶ In addition, funds originally earmarked for certain projects were allegedly improperly used for other projects.⁷

With regards to the biomedical facility project associated with Jay Peak Biomedical Research Park L.P. (JPBRP), the SEC and Vermont complaints allege that (1) JPBRP had raised \$83 million from 166 investors and seeks to raise an additional \$27 million from 54 investors⁸, (2) at least some of the funds raised had been diverted for other purposes unrelated to this project⁹, and (3) the Private Placement Memorandum for this project states that the ANC Bio Products were ‘currently in the process of FDA approval’ but that, in reality, Defendants had never applied for FDA approval for the ANC Bio Products despite stating the project was set to commence in October, 2014, without also including the material contingency that commencement of the project was dependent on FDA approval, and without disclosing the risk that the FDA might not approve the ANC Bio Products.¹⁰ In addition, the SEC complaint alleges that “although the Defendants have raised almost three-quarters of the money for the research facility, they have done almost no work on it other than site

⁴ See page 1 of the SEC and Vermont complaints.

⁵ See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 2.

⁶ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>, p. 3-4.

⁷ This is noted throughout the SEC and Vermont complaints.

⁸ See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 7.

⁹ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>, p. 33.

¹⁰ Ibid., p. 34.

preparation and ground-breaking, and are years behind their original construction and revenue schedule”.¹¹

Additionally, according to the SEC complaint, “between October 2011 and December 2012, Stateside Phase VI (i.e., the NCE, Jay Peak Hotel Suites Stateside L.P.) raised \$67 million from 134 investors through an EB-5 offering of limited partnership interests to build an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center. Although the Stateside Phase VI offering was fully subscribed, the Defendants have only built the hotel. A small amount of work has been done on building the cottages and work has not yet begun on the recreation and medical centers.”¹²

In addition, a recent press report mentioned that on May 19, 2016 a Plainfield, VT “woman (Linda West) obtained a default judgement against her former employer, Seldon Technologies, in a lawsuit she filed alleging that the Windsor water filtration device maker fired her over objecting to financial irregularities stemming from the company’s participation in a federal government’s program awarding visas to foreign investors in exchange for helping to bankroll job creation.”¹³ The article also noted that Ms. West, “who worked as an accountant at Seldon from 2003 to 2012, sued the company in Vermont Superior Court in Woodstock (in) 2013, alleging that she was fired after she complained that Seldon used EB-5 funds to pay for a company officer’s purchase of Seldon stock in addition to his federal and state income taxes and deferred income allocation.”¹⁴ The judge ruled Seldon liable with damages to be determined by a jury at a later date.¹⁵ In fact, according to another article, on June 30, 2016 a Vermont state superior court jury awarded West \$400,000 in compensatory damages against Seldon, comprised of \$325,623 in lost back pay and \$74,377 in lost future pay.¹⁶

After conducting our review, USCIS has determined that additional information is required to ensure that the Regional Center is continuing to promote economic growth pursuant to 8 C.F.R. § 204.6(m)(6).

II. Request for Information

According to 8 C.F.R. § 204.6(m)(6),

¹¹See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 3.

¹²Ibid., p. 7.

¹³ See <http://www.vnews.com/Seldon-Technologies-lawsuit-claims-EB-5-via-program-financial-mismanagement-at-former-water-filtration-device-maker-2468881>.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ See [http://www.vnews.com/Jury-awards-former-Seldon-Technologies-employee-\\$400-000-in-malfeasance-lawsuit-3201629](http://www.vnews.com/Jury-awards-former-Seldon-Technologies-employee-$400-000-in-malfeasance-lawsuit-3201629).

[t]o ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the [Program] if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

As explained in the Form I-924A instructions, the information collected through the Form I-924A permits USCIS to determine whether a regional center continues to serve the purposes of the Program. The regulations, as well as the I-924A form instructions, further indicate that USCIS may request more information or evidence. Accordingly, USCIS issues this request. In response to this notice, while not required, it may be helpful to provide a cover letter that acts as an executive summary, followed by a table of contents with sections that are tabbed at the bottom of the page.

Thus, please provide the following information and responses to these questions:

- In light of the new information that has come out since your FY2015 I-924A was submitted, please provide corrections, if needed, to the information supplied on that form by submitting a new FY2015 I-924A with the corrected information. (The corrected information should be highlighted and anything previously incorrect should be identified.) For example, your I-924A states that EB-5 investors invested \$17.5 million in ANC Bio Vermont GP Services, LLC. However, the Vermont complaint claims that EB-5 funds were transferred away from this entity for other purposes, including Ariel Quiros misusing and misappropriating some funds.¹⁷ Thus, should this \$17.5 million figure be corrected, and is any explanation needed in the I-924A with regards to this?

In addition, if any of the I-924A Forms prior to FY2015 need to be corrected, please supply them in a similar fashion.

- In light of the new information that has come out since your FY2015 I-924A was submitted, please provide an interim I-924A *for the period from December 24, 2015 (i.e., when that form was supplied to us) – Present.*

¹⁷ See

<http://www.dfr.vermont.gov/sites/default/ext/sl/dev/docs/State%20v.%20Quiros%20et.%20al.%20COMPLAINT%20SIGNED%20&%20FILED.pdf>, p. 33.

- The prior section (page 3) mentioned how the SEC and Vermont complaints allege various ways in which over \$250 million of EB-5 investors' funds were misused and/or misappropriated. Thus, how much of EB-5 investors' capital (i.e., each one contributed \$500,000) is now unavailable for actual EB-5 projects? Please delineate the source/components of the total. For any such capital now unavailable for actual EB-5 projects, are there any New Commercial Enterprises (NCEs) and projects which consequently now have a shortage of funds? If so, (1) please name them, (2) what is the amount of the shortage for each, and (3) what is the total project cost for each project with such a shortage?
- Please provide financial information which demonstrates whether each of the following entities have the ability (and resources) to ensure the Regional Center can continue to promote economic growth (including effectively run its affairs), particularly in light of the information that has been made public through the SEC and Vermont complaints: (1) the VACCD, and (2) all NCEs and Job Creating Entities (JCEs) associated with any projects connected to your regional center that have not yet been completed. (This would *inter alia* include any projects that are planned, but have not yet gotten underway, such as the facility associated with Jay Peak Biomedical Research Park, L.P.) If available, your response should include financial and/or bank statements, plus any other information which will address this.
- With regards to the biomedical facility project associated with Jay Peak Biomedical Research Park, L.P., the previous section mentioned the SEC and Vermont complaints' allegations that the project had incurred various misrepresentations, funding issues, and schedule problems. (See p. 3-4 above.) Given these alleged misrepresentations and funding and schedule problems, do you realistically expect this project to proceed and be undertaken? Please provide sufficient detail with regards to your response. Also, do you still intend to raise additional funds for this project and if so, why, and how much?
- As noted above in the Background section, the SEC complaint mentioned that the Stateside Phase VI (EB-5) offering was fully subscribed, but the Defendants have only built the hotel. Given that the full EB-5 funding was obtained, but much work remains to be done (i.e., on the vacation rental cottages, a guest recreation center, and a medical center), do you realistically anticipate the hotel to open for operations and the other facilities to be built? Do you expect there to be sufficient job creation to support Form I-829 (i.e., permanent residence status) approvals for all the EB-5 investors, or if not, for how many? How many jobs do you expect this project to create (i.e., for EB-5 job creation purposes)?
- The prior section also discussed recent court judgments in favor of Linda West against Seldon Technologies. (See page 4.) If you have any further information on this beyond what is noted in the articles referred to above, please provide that. In terms of her claims and the judgments mentioned in the articles, do you believe that EB-5 funds at Seldon were indeed used for purposes other than job creation, and if so, how much? Please explain.

According to USCIS records, 7 EB-5 investors in this project are currently awaiting our adjudication of their Form I-829 petitions for permanent residence status, 2 I-829s have been

approved, and 1 EB-5 investor has not yet submitted his/her I-829 Form yet (although his/her I-526 Form was approved). Given that (1) Seldon has shut down, as noted in your FY 2015 I-924A submission¹⁸, and (2) these court decisions, how many jobs were created by this project (i.e., for EB-5 job creation purposes)? Please explain with sufficient detail so that we can understand your view.

- With regards to all EB-5 investors whose funds were alleged to be misused or misappropriated (as described in detail above), have they been informed of this by VACCD, the Receiver (Michael Goldberg), or anyone else connected to your regional center? If so, by whom and when?
- According to our records with regards to your regional center, USCIS received the most recent Form I-526 petitions filed by alien investors under Jay Peak Biomedical Research Park, L.P. and Q Burke Mountain Resort, Hotel and Conference Center, L.P. on April 18, 2016 and May 24, 2016, respectively. Please indicate when the Regional Center became aware of the alleged diversion of investors' funds in relation to (1) any investigative action(s) taken¹⁹, and (2) the Regional Center's marketing activities for the projects. Please provide evidence regarding what steps, if any, the Regional Center takes to engage in monitoring and oversight of the projects that it sponsors.
- Additionally, in light of the SEC and Vermont complaints and other information that has come out since your FY2015 I-924A was submitted, please provide evidence regarding what new steps, if any, the Regional Center has taken or plans to take in monitoring and oversight of the projects that are subject of the complaints discussed above.
- Are there any other problems and issues, in addition to those noted above, that could adversely affect your Regional Center's ability to continue to promote economic growth and create jobs, as well as effectively administer the Regional Center's affairs (including monitoring the NCEs, JCEs, and financial flows involved)?

III. Conclusion

USCIS requests that the Regional Center provide the additional information and evidence specified above. If the Regional Center fails to submit such additional information and evidence, USCIS will issue a notice of intent to terminate the Regional Center's participation in the Program.

Thank you for your time.

¹⁸ With regards to the Seldon Technologies (SWCP, LP) project, your FY15 I-924A reads, "On September 28, 2015, Seldon underwent an orderly shutdown of all its operations. Consequently, all employees were laid-off indefinitely and an auction of intellectual and personal property followed."

¹⁹ This includes, but is not limited to, actions by law enforcement and regulatory agencies, to include the Vermont Department of Financial Regulation.

Agency of Commerce and Community Development
1 National Life Drive – Davis Bldg, 6th Floor
Montpelier, VT 05620-0501
accd.vermont.gov

[phone] 802-828-3211

August 25, 2016

VIA HAND DELIVERY
AND FEDERAL EXPRESS

U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE
Mailstop 2235
Washington, DC 20529


**RE: Vermont Agency of Commerce and Community Development Regional Center
RCW1536353984/ID1031910148**

Dear Sir/Madam:

Enclosed please find copies of the Vermont Agency of Commerce and Community Development's Form I-924A (Supplement to Form I-924) and Response to the Request for Information dated July 8, 2016.

Thank you for your assistance in this matter.

Very truly yours,



Patricia Lynn Moulton
Secretary

PLM

Enclosures

cc: USCIS (via Federal Express with original)

AM 58624008.1



August 25, 2016

We appreciate the opportunity to respond to your questions regarding the operations of the Vermont Regional Center (“VRC”). Before addressing your specific questions, we thought it would be helpful to provide a general overview of the VRC’s structure and operations. The VRC was granted regional center status by USCIS in 1997 and is owned and operated by the State of Vermont and funded through a direct appropriation from the Vermont Legislature and fees paid to the VRC by EB-5 projects.

The VRC resides within the Vermont Agency of Commerce and Community Development (“ACCD”), with its Secretary, Patricia Moulton, serving as the principal representative of the Center. ACCD is the state agency charged with coordinating, overseeing and promoting economic development in Vermont. In December 2014, the VRC involved the Vermont Department of Financial Regulation (“Department” or “DFR”) to share in the administration of the VRC and to provide enhanced oversight and monitoring of EB-5 projects. As Vermont’s financial regulator, DFR oversees the insurance, captive insurance, state banking and securities industries within the state, including the registration and examination of individuals operating within these industries. It has regulatory powers and investigates violations in these industries and brings enforcement actions when appropriate.

It is important to note that the VRC is an “umbrella” regional center that hosts EB-5 projects rather than undertaking development of such projects directly. Accordingly, the VRC provides the regional center infrastructure to approved private developers who then independently raise the EB-5 capital and undertake individual projects. The VRC enters into a Memorandum of Understanding (“MOU”) with each EB-5 project that outlines the project’s responsibilities and obligations. A copy of the current MOU is attached as Exhibit A. The VRC oversees and monitors the private developers while they engage in their project activities.

Coordination between ACCD and DFR

ACCD and DFR currently share in the operation of the VRC. ACCD generally markets the VRC and its hosted projects, makes all filings with USCIS, conducts initial due diligence of prospective projects including review of economic analyses and business plans, vetting the principals of the project and assisting in identifying and evaluating proposed sources of capital. DFR reviews and approves a prospective project’s offering documents, legal structure and investment terms and oversees compliance with the offering documents through quarterly reports and examinations. Over time, the VRC on its own initiative enhanced the oversight provisions of the model MOU that USCIS had supplied and required. One significant addition, among



others, for project approvals after 2014, was the requirement for the EB-5 project to provide annual, audited financial statements to the VRC.

The Arrangement between the VRC and its Projects

As an umbrella regional center, the VRC does not directly handle or manage any EB-5 investor dollars. Instead, such funds are transferred directly from the investors to the applicable EB-5 project hosted by the VRC.

The VRC does not file or assist in filing I-526 or I-829 petitions. This is exclusively done by the investors with information provided directly from the respective projects. As part of its oversight and monitoring, the VRC receives information from the EB-5 projects on the status of investors' USCIS petitions.

The budget for the VRC is part of the ACCD budget, which is approved annually by the Vermont Legislature as part of the overall State operating budget.

VRC Marketing

The VRC generally markets the EB-5 program as a financing alternative in Vermont and identifies all VRC EB-5 projects that are actively raising money on its website, at industry events and to inquiring prospective investors. However, the VRC does not market or promote individual projects, but rather the VRC and the EB-5 program generally.

A prospective investor that contacts the VRC directly is provided information on all active projects associated with the VRC that are raising money (see the ACCD website at: http://accd.vermont.gov/business/relocate_expand/eb5). The VRC staff makes clear that the investor must conduct its own due diligence to determine which VRC EB-5 project best suits its immigration and investment needs. When the investor has determined which project he/she wishes to invest in, the investor corresponds with that project. As the host regional center, the VRC is not the recipient of EB-5 investment dollars nor does it have direct contact with EB-5 investors once they have chosen in which VRC project they wish to invest.

Completed Projects: To date, the VRC has partnered with fifteen EB-5 projects in Vermont. USCIS has requested information on nine of these projects (the eight limited partnerships related to Jay Peak and the Seldon Technologies project) which will be discussed more fully in the responses. Of the six remaining projects, two have already been successfully completed, both creating the required jobs for their investors to obtain permanent residency.

- **Sugarbush Resort (Summit Ventures)** in Warren, Vermont was a “distressed business” project which began raising EB-5 capital in January 2007. The project was successful in attracting 40 EB-5 investors raising \$20 million in investment as part of a \$100 million project to build a new hotel, three new base lodges and expand snowmaking at the Sugarbush Mountain Resort. The project broke ground in 2009 and construction was completed after several phases in 2013. The hotel and resort continue to operate successfully. All but one investor has had their I-829 applications approved.
- **Country Home Products** in Vergennes, Vermont was a “distressed business” that manufactures various agriculture and forest products for home and commercial use. The company was successful in attracting 23 EB-5 investors to do a manufacturing plant and

equipment upgrades as well as engineering and manufacturing to improve product lines. The project retained jobs at the manufacturing facility in Vermont, which is still in operation. All 23 investors have filed their I-829 applications. Sixteen applications have been approved and the remaining seven applications are pending adjudication.

Notwithstanding the allegations pending with respect to the Jay Peak projects, it is important to understand that most of the Jay Peak projects have been completed and are in commercial operation. There are five completed Jay Peak related projects. They include:

- **Phase I (Jay Peak Hotel Suites LP):** This project involved the sale of 35 limited partnership interests in the Jay Peak Hotel Suites L.P. ("Phase I"). The total offering amount for the project was \$17.5 million. Pursuant to the Phase I PPM, the limited partnership would acquire land from Jay Peak, Inc. comprising approximately .48 acres and construct a six-floor building comprising: (1) a new hotel containing a mix of 57 one, two and three bedroom hotel suites owned by the Phase I limited partnership; and (2) a commercial unit and a service unit to provide guest services, food and beverage and recreation facilities owned by Jay Peak, Inc.
- **Phase II (Jay Peak Hotel Suites Phase II LP):** This project involved the sale of 150 limited partnership interests in the Jay Peak Hotel Suites Phase II L.P. ("Phase II"). The total offering amount for the project was \$75 million. Pursuant to the Phase II PPM, the limited partnership used the investors' funds to construct the hotel project (the "Hotel Project") and the ancillary projects (the "Ancillary Projects"). Pursuant to the Hotel Project, the limited partnership would acquire land from Jay Peak, Inc. and construct a multi-story building (the "Hotel Jay") comprising: (1) a new hotel containing 120 one, two and three bedroom suites to be owned by the Phase II limited partnership; (2) a commercial unit consisting of spa facilities, conference center, restaurants and retail owned by Jay Peak, Inc.; and (3) constructing a separate office building to contain administrative offices, grocery and a deli. Pursuant to the Ancillary Projects, the limited partnership would construct: (1) a water park; (2) a golf club house; (3) an indoor ice rink arena; and (4) a bowling center.
- **Phase III (Jay Peak Penthouse Suites LP):** Penthouse was the first EB-5 project undertaken from start to finish by Stenger and Quiros since they purchased Jay Peak. It involved the sale of 65 limited partnership interests in the Jay Peak Penthouse Suites LP ("Penthouse") for a total project cost of \$32,500,000. Penthouse was in part the product of a very successful Phase II capital raise, which had become fully subscribed, and instead of turning EB-5 investors away, Stenger and Quiros decided to expand the Phase II hotel from four to five stories. The fifth story would house the Penthouse suites, to be owned by the Penthouse investors, and which would cost approximately \$20 million to construct. Additionally, the Penthouse project involved the construction of the Mountain Learning Center, an approximately \$2.8 million project.
- **Phase IV (Jay Peak Golf and Mountain Suites LP):** This project involved the sale of 90 limited partnership interests in the Jay Peak Golf and Mountain Suites LP ("Golf and Mountain") for a total project cost of \$45 million. Golf and Mountain called for the construction of fifty vacation rental cottages as well as a wedding chapel, tram house building and a mountain top café; and

- **Phase V (Jay Peak Lodge and Townhouses LP):** This project involved the sale of 90 limited partnership interests in the Jay Peak Lodge and Townhouses LP ("Lodge and Townhouses") for a total project cost of \$45 million. Lodge and Townhouses called for the construction of vacation rental cottages and townhomes as well as a skier and summer services center with skier café, a parking garage with tennis courts and an auditorium.

Of the other four VRC EB-5 projects, Trapp Family Lodge has nearly completed its EB-5 capital raise and its project construction, and Mount Snow has successfully completed its EB-5 capital raise and has made substantial progress on its project construction. The last two projects, Southface Village at Okemo and Stowe Aviation LLC, are still in early stages of their EB-5 capital raise, as further described below.

The VRC has promoted economic development in the State of Vermont and continues to do so, notwithstanding the issues that have arisen with respect to the Jay Peak projects. Attached as Exhibit B is a letter from counsel to two Vermont EB-5 projects affirming the VRC's value in promoting economic growth in Vermont through the EB-5 program.

In response to the federal and state complaints filed in April 2016 with respect to the Jay Peak projects, ACCD, the VRC and the Receiver appointed by the federal court sent to USCIS the letter attached as Exhibit C. The letter urged favorable consideration of a number of policy considerations that they believe would help ameliorate the adverse circumstances facing many of the Jay Peak investors as a result of the alleged fraudulent activity. The VRC wants to reiterate the importance of supporting these proposals and continues to urge favorable action on the part of USCIS and others, as needed.

Response to RFI Questions

The following sets forth the specific questions posed by USCIS in its Request for Information and our responses. The VRC intends to supplement this response, if necessary, to the extent it learns of additional relevant information after the date of this response.

1. *In light of the new information that has come out since your FY2015 I-924A was submitted, please provide corrections, if needed, to the information supplied on that form by submitting a new FY2015 I-924A with the corrected information. (The corrected information should be highlighted and anything previously incorrect should be identified.)*

The I-924A includes: (1) a report of the total jobs created during the reporting period; and (2) a report of the EB-5 capital investment during the reporting period.

Jobs created: The Jay Peak projects based their reporting on the number of I-829s approved during the reporting period.¹ Accordingly, all prior I-924As filed by the VRC include job creation data based on approved I-829s and their corresponding 10 jobs. The status of approved I-829s has not changed so the VRC has no reason to amend the job creation figure in its previously filed I-924As at this time.

EB-5 capital invested: Due to the allegations contained in the state and federal civil actions against Jay Peak, the Vermont Regional Center contacted the federally appointed receiver, Michael I. Goldberg (the “Receiver”), who is supervised by the federal court in Miami, Florida, to request final reports prepared by his forensic accountants. The Receiver indicated that such reports would not be complete for several weeks. Please see the correspondence between the Vermont Regional Center and the Receiver on this subject attached as Exhibit D.

The Vermont Regional Center believes it is appropriate to wait until it receives these final reports from the Receiver before determining whether amendments to the I-924As regarding capital investment are necessary.

- a. *For example, your I-924A states that EB-5 investors invested \$17.5 million in ANC Bio Vermont GP Services, LLC. However, the Vermont complaint claims that EB-5 funds were transferred away from this entity for other purposes, including Ariel Quiros misusing and misappropriating some fund [footnote omitted].*

The \$17.5 million referenced above is in an escrow account at People’s United Bank and is in the control of the Receiver. As more fully described below, these monies are in escrow because the Department of Financial Regulation (the “Department”)

¹ This is based on one of the 2 USCIS approved job count methodologies.

required ANC Bio Vermont GP Services, LLC and Jay Peak Biomedical Research Park L.P. (“Jay Peak Biomedical”) to place any new investor funds in escrow until Jay Peak Biomedical and affiliated entities successfully completed a financial audit to be conducted by the Department’s forensic accounting firm.

The funds currently remain in escrow because Jay Peak Biomedical did not successfully complete the financial audit prior to the Department and the Vermont Attorney General filing its securities fraud complaint on April 14, 2016.

The resolution of the \$17.5 million in escrow will ultimately be made by the federal court supervising the Jay Peak receivership.

- b. *Thus, should this \$17.5 million figure be corrected, and is any explanation needed in the I-924A with regards to this?*

As noted above, the resolution of the \$17.5 million in escrow will ultimately be made by the federal court supervising the Jay Peak receivership. The court may decide to: (1) allow an EB-5 investor to transfer his or her investment to another EB-5 project in the Vermont Regional Center; (2) return the sums in escrow to the respective EB-5 investor; and/or (3) do something with the escrowed money that the Vermont Regional Center does not anticipate at this time.

Accordingly, the Vermont Regional Center will analyze the impact, if any, on its 2015 I-924A filing when the federal court makes a final determination on the disbursement of the escrowed funds and amend as necessary.²

In addition, if any of the I-924A Forms prior to FY2015 need to be corrected, please supply them in a similar fashion.

As noted above, at this time, the Vermont Regional Center has no reason to amend its previously filed I-924As.

2. *In light of the new information that has come out since your FY2015 I-924A was submitted, please provide an interim I-924A for the period from December 24, 2015 (i.e., when that form was supplied to us) – Present.*

Attached as Exhibit E is an interim I-924A for the time period between October 1, 2015 and June 30, 2016. The information in this interim report is derived from the quarterly compliance reports for the fourth quarter of 2015 and the first two quarters of 2016. A detailed overview of the VRC’s required quarterly reports and

² We note that USCIS has provided guidance on how to properly complete the I-924A. The guidance indicates that escrowed EB-5 investor funds should not be included in the calculation of EB-5 capital investment for I-924A purposes. Accordingly, the \$17.5 million that was included on the VRC’s 2015 I-924A for calculating the EB-5 capital investment of Jay Peak Biomedical Research Park L.P. (“Jay Peak Biomedical”) may have been in error. The VRC believes that one comprehensive set of amended I-924A filings, if necessary, is a more appropriate approach. Accordingly, the VRC will analyze this issue in greater detail when it receives the Receiver’s reports and more broadly examines the prior EB-5 capital investment calculations.

examinations can be found below, but generally DFR requires each EB-5 project to deliver an extensive amount of information relating to its project, including investor, financial and construction updates. Similarly, on a quarterly basis, DFR examines projects in active construction to verify information in a quarterly compliance report and offering documents.

Please note regarding the Jay Peak-affiliated projects, this interim report only includes information from the Q Burke Mountain Resort, Hotel and Conference Center, L.P. ("Burke") project. As more fully described below, although Burke is under the Receiver's control, it is not a defendant in either the state or federal complaint, and the VRC has confidence in these numbers for this period. However, regarding the Jay Peak-affiliated EB-5 projects that are named as defendants in the state and federal complaints, the VRC is waiting on information from the Receiver to verify the information the VRC has in possession regarding these projects.

3. *The prior section (page 3) mentioned how the SEC and Vermont complaints allege various ways in which over \$250 million of EB-5 investors' funds were misused and/or misappropriated. Thus, how much of EB-5 investors' capital (i.e., each one contributed \$500,000) is now unavailable for actual EB-5 projects? Please delineate the source/components of the total. For any such capital now unavailable for actual EB-5 projects, are there any New Commercial Enterprises (NCEs) and projects which consequently now have a shortage of funds? If so, (1) please name them, (2) what is the amount of the shortage for each, and (3) what is the total project cost for each project with such a shortage?*

Along with the five completed Jay Peak EB-5 projects, there are three incomplete Jay Peak projects; however, only two of these projects have current shortages. The limited partnerships for the three incomplete projects are: (1) Burke; (2) Jay Peak Hotel Suites Stateside L.P. ("Stateside"); and (3) Jay Peak Biomedical.

As described in more detail below, the VRC does not believe Burke has a current shortage while Stateside and Jay Peak Biomedical do have current shortages.

Burke

Burke is a \$98 million project consisting of construction of four main components: (1) a hotel; (2) an aquatic center; (3) a tennis facility; and (4) a mountain bike facility. Burke raised approximately \$60.5 million that was used to construct the hotel, which was completed in February 2016. Burke is authorized to raise approximately \$37.5 million of additional EB-5 funds, while the remaining components are estimated to cost approximately \$32.3 million, according to the Burke PPM.

Accordingly, although incomplete, the VRC believes that the Burke project does not currently have a shortage and understands that it is the current intention of the

Receiver to pursue completion of the aquatic center, tennis facility and mountain biking facility with additional EB-5 investments.

Stateside

Stateside completed its \$67,000,000 offering in or about December 2012. The project consisted of building a hotel, 84 cottages, a medical center, and a guest recreation center.

Construction on the Stateside hotel project began in or about April 2013 and was opened on December 20, 2013. The Stateside hotel has operated continuously since that date.

Construction for a portion of the 84 cottages is underway with exterior work largely complete on five structures containing several dozen cottages. Approximately four other sites are in various stages of initial siting and/or foundation work.

Construction of the medical center and recreation center has yet to begin.

According to the Stateside offering documents, the cost of the 84 cottages, medical center, and guest recreation center are estimated to total \$32,039,000, excluding any construction supervision costs. Approximately \$6,000,000 has been spent on constructing the cottages. The VRC understands that all Stateside accounts currently hold less than \$60,000.

The VRC understands that the Receiver has estimated that construction for the 84 cottages, medical center and recreation center can be completed for approximately \$17.5 million. Accordingly, the shortage at Stateside is currently estimated to be approximately \$17.5 million.

Jay Peak Biomedical

The Jay Peak Biomedical project was initiated in 2012 and originally sought to raise \$110 million to construct a biomedical facility in Newport, Vermont. As of April 14, 2016, Jay Peak Biomedical had raised approximately \$83 million from 166 investors and sought to raise an additional \$27 million. Approximately \$17.5 million of the \$83 million remains in the escrow account referenced above.

The Jay Peak Biomedical PPM indicated that the \$110 million would be used as follows: (1) \$6 million for the purchase of the 7-acre parcel of land; (2) \$72,797,370 to construct and equip the facility, including the biomedical research clean rooms; (3) \$9,485,305 for “construction supervision” and \$3,161,769 for “construction supervision expenses”; (4) \$10 million for distribution and marketing rights, including intellectual property rights; (5) \$2,487,925 for other costs, including design/architecture costs, infrastructure; and (6) \$6,067,629 in

working capital. Additionally, Jay Peak Biomedical represented it would contribute \$8 million for certain infrastructure costs.

A significant shortage exists as a result of the alleged misuse and misappropriation of Jay Peak Biomedical investor funds. Based on the representations in the PPM, the project had at least \$84 million of construction work remaining; however, even if the project became fully subscribed by raising the additional \$27 million, it is estimated to have a shortage of approximately \$39.5 million.

However, the VRC understands that the Receiver does not intend to seek to raise any additional EB-5 funds or to complete the Jay Peak Biomedical project as it was originally envisioned. Rather, VRC understands that the Receiver currently intends to seek to amend the Jay Peak Biomedical business plan to contemplate another use of the investor funds on hand and funds recovered from claims against Ariel Quiros and other third parties in order to create the necessary EB-5 jobs.

Clarifying Points

Initially, it should be noted that the state and federal complaints do not allege that over \$250 million of EB-5 investors' funds were misused and/or misappropriated. Both complaints allege that \$200 million of EB-5 investor funds were misused, which includes \$50 million of funds that were allegedly misappropriated.

Further, the \$150 million of misused EB-5 investor funds includes a subset of funds that were comingled or otherwise inappropriately transferred between accounts and/or business entities but ultimately were used to complete construction of the Jay Peak EB-5 projects for the following limited partnerships: (1) Jay Peak Hotel Suites L.P.; (2) Jay Peak Hotel Suites Phase II L.P.; (3) Jay Peak Penthouse Suites L.P.; (4) Jay Peak Golf and Mountain Suites L.P.; and (5) Jay Peak Lodge and Townhouses L.P.³ The VRC understands that the Receiver is reviewing the actual uses of all EB-5 funds raised and jobs created with respect to the various Jay Peak projects and intends to seek necessary or appropriate modifications to ensure that the greatest possible number of investors obtain at least the immigration benefits of the EB-5 program.

4. *Please provide financial information which demonstrates whether each of the following entities have the ability (and resources) to ensure the Regional Center can continue to promote economic growth (including effectively run its affairs), particularly in light of the information that has been made public through the SEC and Vermont complaints: (1) the VACCD, and (2) all NCEs and Job Creating Entities (JCEs) associated with any projects*

³ Although Jay Peak ultimately completed the EB-5 funded construction, both the state and federal complaints allege Jay Peak failed to make certain contributions to various EB-5 limited partnerships. However, Jay Peak's alleged failure to make such contributions does not impact USCIS job creation as these contributions were outside of the scope of job creation.

connected to your regional center that have not yet been completed. (This would inter alia include any projects that are planned, but have not yet gotten underway, such as the facility associated with Jay Peak Biomedical Research Park, L.P.) If available, your response should include financial and/or bank statements, plus any other information which will address this.

Ability and Resources of the Vermont Regional Center

ACCD and DFR have the personnel and budgetary resources to effectively administer the VRC and promote economic growth. They do not, however, as discussed above, finance or guarantee the viability of any particular project.

VRC Personnel Resources

Since December 2014, the VRC has been jointly operated by two state agencies: ACCD, which is charged with marketing the VRC, including representing the VRC at EB-5 industry events, handling inquiries from current and prospective VRC investors, and administering filings with USCIS and DFR, which is charged with the oversight, monitoring and compliance of EB-5 projects that associate with the VRC.

ACCD's Commissioner of the Department of Economic Development and its General Counsel generally administer and oversee ACCD's functions for the VRC. ACCD's Commissioner of the Department of Economic Development and its General Counsel generally administer and oversee ACCD's functions for the VRC. ACCD has maintained an EB-5 Director in the Department of Economic Development to conduct day to day operations of marketing the VRC, pursuing additional projects, filing all required reports and generally promoting the VRC. On July 20, 2016, following the resignation of ACCD's prior Director of its EB-5 program, Joan Goldstein, Commissioner of the Department of Economic Development, assumed these duties. ACCD's functions are ultimately overseen by its Secretary who is the principal representative of the VRC. In addition, the current Secretary of ACCD has been appointed interim President of the Vermont Technical College, effective September 9 and Lucy Leriche, currently Deputy Secretary of ACCD, has been appointed Secretary of ACCD, as of that date.

DFR's functions for the VRC are generally administered by two compliance examiners whom are overseen by a director and the Deputy Commissioner of the Securities Division. DFR's EB-5 compliance functions are ultimately overseen by DFR's Commissioner.

VRC Financial Resources

ACCD is an agency of the State of Vermont and receives its annual funding, including amounts allocable to the VRC, through the annual budget process. Both ACCD and the VRC have sufficient budgetary appropriations from the Vermont

Legislature to fund all of its operations, including personnel costs and third party professionals, as needed.

The State of Vermont Comprehensive Annual Financial Report provides greater detail as to the budgetary resources of ACCD and DFR:

http://finance.vermont.gov/sites/finance/files/pdf/cafr/2015_CAFR_FINAL.pdf.

Information regarding the overall state budget (DFR's budget starts at B. 226 and ACCD's starts at section B. 800) is available at:

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT172/ACT172%20As%20Enacted.pdf>.

Jay Peak Projects

The following are the three Jay Peak affiliated projects currently under the Receiver's control and that are not complete:

(1) Stateside

As mentioned above, construction of the Stateside project is incomplete. The VRC understands that the Receiver currently estimates the cost to complete construction to be approximately \$17.5 million. The VRC further understands that, while the Stateside project currently has less than \$60,000 cash on hand, it is the Receiver's current intention to pursue completion of construction of the 84 cottages and the medical center and recreation center with funds recovered from claims against Ariel Quiros or other third parties.

(2) Jay Peak Biomedical

Approximately \$17.5 million of Jay Peak Biomedical funds remain in escrow, but any use of those funds is controlled by the federal court handling the receivership.

However, the VRC understands that the Receiver does not intend to seek to raise any additional EB-5 funds or to complete the Jay Peak Biomedical project as it was originally envisioned. Rather, VRC understands that the Receiver currently intends to seek to amend the Jay Peak Biomedical business plan to contemplate another use of the investor funds on hand and funds recovered from claims against Ariel Quiros or other third parties in order to create the necessary EB-5 jobs.

The VRC will provide USCIS updates, as appropriate, regarding Jay Peak Biomedical.

(3) Burke

Burke is a \$98 million project consisting of construction of four main components: (1) a hotel; (2) an aquatic center; (3) a tennis facility; and (4) a mountain bike

facility. Burke raised approximately \$60.5 million that was used to construct the hotel, which was completed in February 2016. Burke is authorized to raise approximately \$37.5 million of additional EB-5 funds, while the remaining components are estimated to cost approximately \$32.3 million, according to the Burke PPM.

Accordingly, although incomplete, the VRC believes that the Burke project does not currently have a shortage and understands that it is the current intention of the Receiver to pursue completion of the aquatic center, tennis facility and mountain biking facility with EB-5 investments.

Mt. Snow

Mt. Snow has raised all of the necessary funds to complete its EB-5 projects; however, considerable delays in USCIS's I-526 approvals have caused the projects to fall behind its construction schedule.

This project has two phases. Phase one is the Westlake Reservoir, a snow-making pond with a capacity of 120 million gallons, and associated piping and pump-houses to update and improve the snow-making capabilities of Mt. Snow. This phase also includes trail upgrades and expansion and a new ski lift.

The cost to complete this phase is estimated to be \$38 million. Mt. Snow will pay for construction with \$30 million from EB-5 investors (all such funds have been raised and are currently in escrow) with an additional \$8 million to be provided through owner equity. The owner has already contributed its \$8 million in order to commence construction. Much of Phase 1 is complete.

Phase two is the construction of a new, three-story ski lodge consisting of 36,000 square feet and a restaurant, cafeteria and bars with seating for over 600 people. It will also include a retail and convenience store and sales outlet for lift tickets and rentals.

The cost to complete this phase is estimated to be \$28 million. Mt. Snow will pay for construction with \$22 million from EB-5 investors (all such funds are raised and in escrow) with an additional \$6 million to be provided through owner equity.

In May 2016, USCIS approved Mt. Snow's exemplar; however, construction is behind schedule as the terms of Mt. Snow's escrow requires USCIS to approve at least one I-526 application before escrow can be broken. USCIS has yet to approve an I-526 application related to the Mt. Snow project. On August 22, 2016, Peak Resorts, Inc., the parent of Mt. Snow, announced that it is proposing to sell \$20,000,000 of its stock, in part because of the delays in obtaining the USCIS approval necessary for the release of the EB-5 funds from escrow.

Trapp Family Lodge ("Trapp")

Redacted per
§317(c)(7)&(9)

[REDACTED]
The business consisted of the existing hotel, with plans to construct a state of the art brewery for the Trapp Family label and an attached "Beer Hall" theme restaurant.

The construction costs total approximately \$22 million of which approximately \$19 million have been raised through EB-5 investment with the Trapp Family developer contributing \$2 million. With these funds, the developer constructed the brewery which is operational and is constructing the restaurant which is slated to open in September 2016. Trapp is actively seeking to raise the remaining \$1 million from EB-5 investors to complete the financing of the restaurant.

South Face Village ("SFV")

The SFV project is located adjacent to the Okemo Mountain Resort in Ludlow, Vermont. The project includes the development of 20 duplex units, 56 condominium units, 10 single family homes, as well as construction of a base lodge, a ski lift and trails, and related infrastructure, such as roads, water, and sewer.

The projected cost for the project is \$136 million and the anticipated sources of funding include: \$34 million in EB-5 capital, \$4.43 million in developer equity, \$2.0 million in land purchase financing, \$19.33 million in a subordinated construction loan, \$31.39 million in lender financing, and \$44.85 million to come from the sale of the constructed units.

Redacted per
§317(c)(7)&(9)

[REDACTED]
[REDACTED]
complete the project. To date, the ski lift and first set of condominium units have been constructed using owners' equity. The first set of condominium units has also been completely sold and SFV is working on selling and constructing the next set of condominium units. SFV is also awaiting exemplar and I-526 approvals.

Stowe Aviation ("SA")

The SA project is located at the Morrisville-Stowe State Airport in Stowe, Vermont and includes construction of a new terminal along with new and expanded aircraft hangars, a U.S. Immigration and Customs clearance service, a flight academy, an aircraft maintenance and management facility, a restaurant, and a charter service.

Redacted per
§317(c)(7)&(9)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The federal and state grants have funded a runway expansion, which has added services to additional flights on private planes as well as a commuter air service operating at the airport as a result of the runway expansion and SA's activities.

**Redacted per
§317(c)(7)&(9)**

[REDACTED]

5. *With regards to the biomedical facility project associated with Jay Peak Biomedical Research Park, L.P., the previous section mentioned the SEC and Vermont complaints' allegations that the project had incurred various misrepresentations, funding issues, and schedule problems. (See p. 3-4 above.) Given these alleged misrepresentations and funding and schedule problems, do you realistically expect this project to proceed and be undertaken? Please provide sufficient detail with regards to your response. Also, do you still intend to raise additional funds for this project and if so, why, and how much?*

As mentioned above, approximately \$17.5 million of Jay Peak Biomedical funds remain in escrow, but such funds are subject to control of the federal court supervising the receivership.

However, the VRC understands that the Receiver does not intend to seek to raise any additional EB-5 funds or to complete the Jay Peak Biomedical project as it was originally envisioned. Rather, VRC understands that the Receiver currently intends to seek to amend the Jay Peak Biomedical business plan to contemplate another use of the investor funds on hand and funds recovered from claims against Ariel Quiros or other third parties in order to create the necessary EB-5 jobs. The VRC and Receiver have requested a meeting with USCIS officials to discuss amendments to the Jay Peak Biomedical business plan but have not received a response. See also attached Exhibit C.

6. *As noted above in the Background section, the SEC complaint mentioned that the Stateside Phase VI (EB-5) offering was fully subscribed, but the Defendants have only built the hotel. Given that the full EB-5 funding was obtained, but much work remains to be done (i.e., on the vacation rental cottages, a guest recreation center, and a medical center),*
- a. *do you realistically anticipate the hotel to open for operations and the other facilities to be built?*

Stateside completed its \$67,000,000 offering in or about December 2012. The project consisted of building a hotel, 84 cottages, a medical center, and a guest recreation center.

Please note, the Stateside hotel was constructed and has been continuously operating since December 20, 2013. Further, construction for a portion of the cottages was underway with exterior work largely complete on five structures containing approximately 36 cottages. Approximately four other sites are in various stages of initial siting and/or foundation work.

Further, the VRC understands that it is the Receiver's current intention to pursue completion of construction of the 84 cottages and the medical and guest recreation centers. The Receiver currently estimates it will cost approximately: (1) \$12 million to complete the cottages; (2) \$4.1 million to complete the recreation center; and (3) \$1.4 million to complete the medical center. The Receiver is reportedly hopeful that he will be able to recover enough funds from claims against Ariel Quiros, third parties or elsewhere in order to attain completion of this project so all investors will be eligible to have their I-829 petitions approved.

- b. *Do you expect there to be sufficient job creation to support Form I-829 (i.e., permanent residence status) approvals for all the EB-5 investors, or if not, for how many?*

A significant number of EB-5 jobs were created through construction and operation of the Stateside hotel and partial construction of the 84 cottages. As noted above, the Stateside hotel is complete and has been in operation since 2013. In addition, a number of the cottages have been constructed.

The VRC understands that the Receiver currently intends to pursue completion of construction of the 84 cottages and the medical and guest recreation centers so all investors will be eligible to have their I-829 petition approved.

Accordingly, the Vermont Regional Center believes there will be sufficient job creation to support Form I-829 approvals for all the Stateside EB-5 investors.

- c. *How many jobs do you expect this project to create (i.e., for EB-5 job creation purposes)?*

Based on the construction and operation of the Stateside hotel and anticipated completion of the 84 cottages and the medical and recreation centers, the Vermont Regional Center expects the Stateside project to create at least approximately 1,340 jobs for EB-5 job creation purposes.

7. *The prior section also discussed recent court judgments in favor of Linda West against Seldon Technologies. (See page 4.) If you have any further information on this beyond what is noted in the articles referred to above, please provide that. In terms of her claims*

and the judgments mentioned in the articles, do you believe that EB-5 funds at Seldon were indeed used for purposes other than job creation, and if so, how much? Please explain.

Context of Ms. West's Jury Verdict

As a preliminary matter, it is important to understand the context of the legal proceeding so the recent judgment can be properly evaluated.

Linda West had been employed as an accountant by Seldon Technologies, Inc. ("Seldon" or "STI") for nine years before she was terminated in March 2013.

In 2010, a Seldon subsidiary, Seldon Clean Water Products (Asia) L.P. executed a memorandum of understanding with ACCD to associate with the VRC. That same year Seldon began soliciting EB-5 investment under a private placement memorandum eventually raising \$5 million from 10 EB-5 investors. During 2012, South Africa-based telecommunications giant Econet Wireless ("Econet") began investing in STI, eventually taking an 85% stake in the company and in May 2012 Econet installed a new chief executive officer at STI.

STI initially vigorously defended the legal proceeding brought by Ms. West but, in September 2015, STI ceased operating. Further, in December 2015, STI: (1) sold the entirety of its assets at auction to satisfy its debts; (2) lacked any insurance coverage to satisfy any judgment associated with Ms. West's case; and (3) lacked funds to pay legal fees. Accordingly, in December 2015, STI's attorneys filed a motion to withdraw from the case, which was granted in February 2016.

Nevertheless, Ms. West's attorney continued the lawsuit against the unrepresented corporate shell with no assets and moved for default judgment, which was granted in May 2016, and damages were awarded on June 30, 2016. Since STI was not defending itself, the merits of Ms. West's allegations were not determined in a contested proceeding.

Actions of the Vermont Regional Center

Following the verdict, DFR initiated an independent investigation into the allegations. To date, DFR's investigation located an independent accountant's report prepared for STI by the Braver P.C. accounting firm (n/k/a Marcum LLP) dated October 23, 2013 (the "Report"). The Report appears to be in direct response to Ms. West's allegations.

The Report traces the \$5 million of EB-5 investor contributions into the applicable STI bank account. The Report then examines 606 expenditures made between with EB-5 funds between July 1, 2010 and October 15, 2013 and compares those expenditures to the representations made in the private placement memorandum. The Report concludes that the expenditures for which there were supporting

documentation corresponded to one of the allowable expenditure categories in the private placement memorandum. A copy of the Report is attached as Exhibit F.

The Report, however, is not conclusive as it does not trace the entirety of the \$5 million EB-5 investor funds raised by STI. Accordingly, DFR is proceeding with its own independent investigation to determine the accuracy of the Report and independently verify the appropriate expenditure of the total \$5 million of EB-5 funds raised.

Therefore, at this time, the VRC has not discovered any evidence suggesting that EB-5 funds at STI were used for purposes other than job creation. The VRC will continue to update USCIS as DFR's investigation proceeds.

8. *According to USCIS records, 7 EB-5 investors in this project are currently awaiting our adjudication of their Form I-829 petitions for permanent residence status, 2 I-829s have been approved, and 1 EB-5 investor has not yet submitted his/her I-829 Form yet (although his/her I-526 Form was approved). Given that (1) Seldon has shut down, as noted in your FY 2015 I-924A submission [footnote omitted], and (2) these court decisions, how many jobs were created by this project (i.e., for EB-5 job creation purposes)? Please explain with sufficient detail so that we can understand your view.*

Court Decision: As discussed above, the court decision was a default judgment against a legally non-existent defendant that did not determine the merits of Ms. West's claims during the course of a brief trial to determine damages. Further, preliminary findings of DFR's investigation refute Ms. West's claims; specifically, DFR is in possession of the Report prepared by the independent accounting firm that examined 606 transactions made with EB-5 investor funds and did not find any misuse or misappropriation. DFR is still actively investigating the allegations and will update USCIS of its findings.

Seldon Closure: Although Seldon ceased operations in September 2015, the relevant EB-5 investments were made and the requisite jobs were created before this date.

Specifically, Seldon raised \$5 million of EB-5 investment and by December 1, 2014 approximately 96% of these funds had been deployed for project purposes.⁴ Additionally, Seldon's economic impact report determined that 99 full-time permanent jobs had been created between 2010 and 2014 as a result of these EB-5 investments. These 99 jobs support the I-829 applications filed by nine of the ten Seldon EB-5 investors. VRC understands that the one investor who failed to file her I-829 application did so for reasons that are specific to her and not the project generally.

For a more detailed account of EB-5 expenditures and job creation, please see Seldon's economic impact report attached as Exhibit G.

⁴ The VRC understands that the remaining 4% had been deployed by March 1, 2015.

9. *With regards to all EB-5 investors whose funds were alleged to be misused or misappropriated (as described in detail above), have they been informed of this by VACCD, the Receiver (Michael Goldberg), or anyone else connected to your regional center? If so, by whom and when?*

On April 14 2016, the day the State's action was filed and the SEC's action was unsealed, ACCD and DFR held a press conference with the Governor of Vermont and the Vermont Attorney General and detailed the alleged fraud. The press conference and the alleged fraud were widely covered in EB-5 publications – domestic and foreign – as well as national media publications.

The same day as the press conference, DFR published a website (<http://www.dfr.vermont.gov/jay-peak-eb-5-lawsuit>) dedicated to informing investors about details of the fraud allegations, including copies of the state and federal court filings and answers to some frequently asked questions. Once it was published, DFR also linked to the Receiver's website (<https://jaypeakreceivership.com>). ACCD also published a website (<http://accd.vermont.gov/>) with links to both DFR's and Receiver's sites.

ACCD and DFR have also fielded emails and phone calls from hundreds of investors and their attorneys with questions; answering and/or directing the investors' questions to the Receiver when appropriate.

It is the VRC's understanding the Receiver initially emailed all investors for which he had email contact information to inform them of the website where all future information would be filed. The Receiver has established a toll-free investor "Hotline" and an email address for general inquiries, which are found on the Receiver's website. The website includes court filings, correspondence with investors and key judicial decisions. Further, considering Jay Peak investors are from all over the world, the Receiver's website is available in seven languages. The Receiver's website also includes a registration form for investors to complete to more easily facilitate future communications. The Receiver informed the VRC that approximately 563 investors (out of approximately 804) have registered to date. The VRC understands that the Receiver intends to make direct mailings to investors for information regarding other important events.

10. *According to our records with regards to your regional center, USCIS received the most recent Form I-526 petitions filed by alien investors under Jay Peak Biomedical Research Park, L.P. and Q Burke Mountain Resort, Hotel and Conference Center, L.P. on April 18, 2016 and May 24, 2016, respectively. Please indicate when the Regional Center became aware of the alleged diversion of investors' funds in relation to (1) any investigative action(s) taken⁵, and (2) the Regional Center's marketing activities for the projects. Please*

⁵ This includes, but is not limited to, actions by law enforcement and regulatory agencies, to include the Vermont Department of Financial Regulation.

provide evidence regarding what steps, if any, the Regional Center takes to engage in monitoring and oversight of the projects that it sponsors.

ACCD's concerns regarding the Jay Peak Biomedical project evolved over time, beginning in late 2013 until the SEC and Vermont fraud actions were filed in April 2016. As a result of these concerns, ACCD increased its attention on the adequacy of the Jay Peak Biomedical disclosures to investors, suspended fundraising activity for that project, required funds raised for that project as well as the Burke hotel project to be placed in escrow, involved DFR to bring its regulatory and enforcement authority to bear, and cooperated, along with DFR, with the SEC in its investigation. These actions resulted in the filing of the fraud cases, which prevented the improper conduct from continuing, resulted in the appointment of the Receiver and focused efforts on protecting the interests of investors.

ACCD Actions Regarding Jay Peak Biomedical

ACCD directed significant attention to the offering documents and the manner in which the Jay Peak Biomedical project was marketed. ACCD paid particular attention to the accuracy of marketing materials, which led to a focus on the Private Placement Memoranda ("PPM"), as well as the Business and Marketing Plans, and the Job Creation analysis.

By late 2013, ACCD began having concerns about whether all material information about the Jay Peak Biomedical project was being disclosed to investors.⁶ In June 2014, ACCD engaged outside counsel for expert advice on securities laws in preparation for requiring updates to the PPM on the Jay Peak Biomedical project to ensure all material information had been disclosed. ACCD made numerous requests to Stenger and Quiros for information and clarification of a number of issues raised by ACCD's outside counsel.

ACCD then froze all future solicitation of investors for the Jay Peak Biomedical project subject to having Jay Peak Biomedical's counsel provide an unqualified opinion that a new PPM provided all necessary disclosures. When fundraising for the Jay Peak Biomedical project was allowed to resume in April, 2015, the VRC required that all new funds raised for Jay Peak Biomedical be held in an escrow account to be released only when certain conditions were met. Specifically, Jay Peak Biomedical and its affiliated entities were required to complete a satisfactory financial review conducted at DFR's direction by Cohn Reznick. To date, the conditions for release have not been met and the amount held in the escrow account established for Jay Peak Biomedical remains at approximately \$17.5 million dollars and is under the jurisdiction of the Receiver and federal court.

⁶ Information regarding the Jay Peak projects that was brought to the attention of the ACCD by third parties before then were evaluated and, based upon the information then available to it, including the observable progress being made in the development and construction of the projects, the ACCD did not believe that there was at that time a basis to suspend or take other actions with respect to these projects.

ACCD Actions Regarding Burke

Additionally in early 2015, the VRC also reviewed a revised Burke PPM, which had expired and also needed to be updated with disclosures, including reference to the then pending SEC investigation of Jay Peak. Approximately \$35 million had been raised and significant construction had commenced on the Burke hotel at the time the Burke PPM expired. Prior to clearing Burke's revised PPM in July 2015, DFR's investigation confirmed that previously raised Burke EB-5 monies had been properly used for project purposes. Accordingly, the VRC still imposed certain escrow conditions on Burke's future capital raising, but the conditions were different than those for Jay Peak Biomedical.

Specifically, all funds from new Burke investors were deposited in an escrow account and could only be used to complete the Burke hotel. To accomplish this, the VRC hired a third party construction manager to confirm the legitimacy of the construction expenses submitted by Burke and only then did DFR allow the release of funds from escrow to pay the approved expenses.

In February 2016, construction on the hotel was completed, and today the hotel is open and operating.⁷

DFR's Investigation

On December 23, 2014, ACCD and DFR entered into a memorandum of understanding (the "DFR MOU") whereby DFR assumed control of monitoring, oversight and compliance of all approved EB-5 projects in the VRC. ACCD asked DFR to do so in order to allow the VRC to utilize its expertise and statutory authority to provide enhanced oversight and monitoring of projects and to be able to enforce its requests for information through DFR's statutorily authorized regulatory and enforcement powers. The DFR MOU is attached as Exhibit H.

In early 2015, DFR reviewed the offering materials for the Jay Peak Biomedical project and discussed proposed revisions with the project's developers. It also began reviewing financial transactions associated with all accounts related to the Jay Peak projects, not just the Jay Peak Biomedical project. DFR's work started with a review of account statements from Raymond James & Associates, Inc., a brokerage firm at which various Jay Peak accounts had been established and led to reviewing information from at least 12 other financial institutions.

In total, DFR analyzed over 110 accounts with over 130,000 pages of account statements with over 100,000 transactions. Between the first production on March

⁷ Although construction was completed on the Burke, the developers failed to raise enough funds to cover the complete cost prior to the April 2016 state and federal actions. The total contractor and subcontractors claims are approximately \$3.5 million. The Burke contractor and subcontractors have filed liens on the hotel to assure payment when the assets are sold.

10, 2015 and the filing of the state case on April 14, 2016, DFR reviewed and analyzed an average of approximately 361 transactions every single day as part of its investigation.

During its 13-month investigation, DFR worked closely with the SEC attorneys who were also investigating the Jay Peak projects. Those efforts dovetailed with ACCD's responsiveness to the then pending investigation by the SEC through its Miami regional office. DFR believes that its analysis and work product substantively contributed to the SEC civil case against Ariel Quiros, William Stenger and the related entities. As a result of this collaboration, DFR and the Vermont Attorney General coordinated the filing of their respective fraud cases during April 2016.

As a result of the DFR and SEC investigations, the VRC became aware in the Fall of 2015 of the likelihood that funds raised for the various Jay Peak projects (other than Burke) were diverted. The evidence of diversion became stronger as the investigations continued and DFR and the SEC worked together to compile their cases and prepare their complaints, which were filed in April 2016.

Regional Center Marketing

USCIS's RFI asks the VRC to describe "the Regional Center's marketing activities for the projects". For clarification, as noted above, the VRC does not market for specific projects; rather it promotes the VRC and provides prospective investors with information for all of the projects associated with the VRC.

ACCD maintains a website marketing all active EB-5 projects (http://accd.vermont.gov/business/relocate_expand/eb5). In addition, ACCD has attended numerous EB-5 promotional events and investor events where it has generally marketed the VRC.

ACCD continues to promote the list of approved projects on its website, field calls from interested investors and attend events domestically and overseas to represent the VRC and provide general promotion of its projects. As needed, ACCD meets with potential investors to discuss the VRC and our oversight as the only regional center in the US with state financial regulators as part of the VRC.

Additional Compliance Steps Taken

In addition to leading the State's investigation into the alleged Jay Peak securities fraud, the Department also expanded a robust compliance program during the 19 months since it executed the DFR MOU with ACCD.

Personnel: In mid-2015, DFR established two new positions in its Securities Division that mainly focus on EB-5 compliance matters. DFR filled these positions with experienced professionals (one is an attorney and the other is the former Assistant Director of Vermont Tax Department Compliance Division). These

positions fulfill the day-to-day oversight, monitoring and compliance roles for the VRC.

New Rigorous Policies: DFR, in consultation with ACCD, also developed and implemented new rigorous standards that new EB-5 projects must comply with before associating with the VRC.

The new policies required by the current model MOU include: (1) requiring certified annual audits by independent accountants that are to be delivered to DFR; (2) delivery of an annual legal opinion that the project is in compliance with the new policies; (3) stricter requirements surrounding the existence of escrow and the release of escrowed funds; (4) all marketing materials need to be certified by the project that they are accurate and consistent with the offering documents; (5) projects are required to provide semi-annual reports to all investors on the status of the project; (6) require detailed disclosure to investors and DFR of all brokerage services and fees; and (7) clarified the grounds that DFR has to terminate a project from the VRC.

DFR implemented/strengthened two additional policies: (1) quarterly and annual reporting to the VRC; and (2) quarterly compliance examinations.

These new policies are currently internal policies to DFR; however, DFR is planning to formalize these policies over the next couple of months through new EB-5 rule making authority provided to DFR and ACCD after working closely with the Vermont legislature to create that authority. DFR anticipates initiating the administrative rule making process in early October 2016.

Reporting to DFR: EB-5 projects are required to report their status to DFR on a quarterly and annual basis. EB-5 projects must provide DFR with information regarding: (1) all relevant efforts to promote investment in EB-5 project; (2) the number of new investors, their personal information and the status of their investment; (3) all USCIS requests for evidence; (4) copies of subscription agreements related to the sale of securities associated with the EB-5 project; (5) any updated or new marketing materials and marketing information used to carry out the EB-5 project; (6) financial and accounting information such as trial balances, internally prepared financial statements, chart of accounts and any off balance sheet liabilities; (7) a list of all project vendors, including all invoices and payment history; (8) an accounting of jobs, including payroll records where appropriate; (9) any changes in names, titles, job duties, or percentage of time spent on project related duties of key personnel for all entities directly related to the furtherance of the EB-5 project; and (10) evidence and documentation of any material changes or updates to planned project timeline or execution of the project.

A copy of DFR's current quarterly compliance questionnaire is attached as Exhibit I.

Quarterly Compliance Visits: Each quarter DFR personnel physically visits and inspects all EB-5 projects in active construction. During the compliance visit DFR generally observes the status of construction and specifically verifies that the work in progress is in line with the representations made in the offering documents.

11. Additionally, in light of the SEC and Vermont complaints and other information that has come out since your FY2015 I-924A was submitted, please provide evidence regarding what new steps, if any, the Regional Center has taken or plans to take in monitoring and oversight of the projects that are subject of the complaints discussed above.

As described immediately above, during the 19 months since executing the MOU with ACCD, DFR has developed a robust compliance program with regard to the VRC. The details of this program are discussed above in the response to question 10.

Based on these actions, we believe the VRC has one of the most effective EB-5 programs in operation, combining active economic development efforts with robust compliance procedures and controls.

To our knowledge, the VRC is the *only* regional center in the country that has a formal collaboration with its state financial regulatory agency. This provides the VRC with oversight and compliance capability generally not available to any other regional center. We believe the subpoena powers and investigative staff that are available are unique to the VRC.

12. Are there any other problems and issues, in addition to those noted above, that could adversely affect your Regional Center's ability to continue to promote economic growth and create jobs, as well as effectively administer the Regional Center's affairs (including monitoring the NCEs, JCEs, and financial flows involved)?

The VRC is not currently aware of any matters other than those discussed above that might impede or adversely affect its ability to promote economic growth and create jobs through the EB-5 program.

Conclusion

The VRC believes that, notwithstanding the matters that are currently unfolding with respect to the Jay Peak projects, it has promoted and will continue to promote effectively both economic development and job creation in the State of Vermont. The EB-5 program has been and will be an important component of growth in Vermont. As a result of the problems identified at Jay Peak, the VRC brought DFR into the VRC, worked closely with the SEC and the Vermont Office of the Attorney General and has significantly enhanced its oversight of all EB-5 projects.

The VRC understands that the Jay Peak matters have cast a shadow on the EB-5 program in Vermont, but that shadow should not diminish the project completions that have occurred. As described in the letter attached as Exhibit C, the VRC intends to work with the Receiver and

others to help mitigate any adverse effects on the affected investors and on other businesses and residents in the State of Vermont.

In order for the economic development and growth to continue, it is important that the VRC continue its work under the EB-5 program. The various projects also need support and approvals from the federal government in order to permit construction and ultimately job creation to occur. The VRC looks forward to working with all affected parties and stakeholders to help obtain those approvals and to make each project as successful as it can possibly be.

AM 58618499.8

MEMORANDUM OF UNDERSTANDING
BETWEEN
STATE OF VERMONT
AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT
AND
JAY PEAK HOTEL SUITES L.P.

This Memorandum of Understanding ("the Agreement") is made and entered into, by and between:

State of Vermont Agency of Commerce and Community Development, and its successors and assigns ("ACCD"), and

Jay Peak Hotel Suites L.P., a limited partnership organized under the laws of the State of Vermont, and its successors and assigns ("Jay Peak").

WHEREAS

ACCD, a governmental unit of the State of Vermont, is charged with enhancing the Vermont business climate, marketing Vermont to businesses and investors, facilitating, promoting and creating commercial and business opportunities within Vermont to contribute to the economic viability of and benefit the growth of the state; and,

ACCD is an approved and designated Regional Center recognized by the U.S. Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Services ("CIS") in accordance with the Immigrant Investor Pilot Program pursuant to section 203(b)(5) of the Immigration and Nationality Act, as amended, the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, section 610, as amended, and all applicable regulations promulgated thereunder, (collectively, the "Pilot Program law"); and,

Initial designation as a Regional Center was made in a letter dated June 26, 1997, to Howard Dean, M.D., Governor of the State of Vermont from legacy U.S. Immigration and Naturalization Service (INS), informing him of the ACCD's appointment as a Regional Center; and,

Jay Peak is organized for the purpose of creating an EB-5, Alien Entrepreneur investment project within the Agency's Regional Center and managing and operating the investment project in conformance with 8 U.S.C. § 1153 (b)(5)(A) - (D); INA § 203 (b)(5)(A) - (D) of the Immigration & Nationality Act (the "Act") and the Pilot Program law; and,

Jay Peak has contracted with Carroll & Scribner, P.C., Attorneys-at-Law, for legal counsel regarding compliance with U.S. immigration and nationality law as it relates to EB-5, Alien Entrepreneur investment projects and to Regional Center Pilot Programs, and for the purpose of advising upon all transactional matters in connection with such a project; and,

ACCD, as the USCIS approved and designated Regional Center will formally designate an ACCD official, as having amongst his/her principal duties and responsibilities the ongoing coordination, oversight and liaison with respect to those activities of the Jay Peak commercial enterprise in the recruitment, assistance, and involvement of immigrant investors through the EB-5 program, and identifying said ACCD official to the USCIS in writing. Pursuant to its responsibilities and obligations as a USCIS approved and designated Regional Center within the Immigrant Investor Pilot Program, ACCD desires to obtain assistance in the planning and management of the Jay Peak EB-5, Alien Entrepreneur investment project within ACCD's Regional Center and to assure the project's compliance with U.S. immigration law and regulations concerning investments within a regional center in the EB-5 visa preference category and, thereby, to have greater assurance of its compliance with regional center requirements; and,

ACCD and Jay Peak desire an arrangement whereby Jay Peak with the on-going benefit of legal counsel will, together with the periodic concurrence of the ACCD's designated Regional Center monitoring official, will assist with the oversight, administration, management and overall compliance of the Jay Peak project with legal and regulatory requirements, and Jay Peak will formally report in writing not less than every three (3) months upon the activities of the project to ACCD and respond to any ongoing ACCD inquiries about the project and assist ACCD to comply with its obligations as a USCIS approved and designated regional center with respect to this project

NOW, THEREFORE, in consideration of the mutual agreements, and representations set forth herein, the parties agree as follows:

1. ACCD will promptly request that USCIS acknowledge ACCD's designation of Kevin L. Dorn, Secretary of the Agency of Commerce and Community Development as the principal representative of ACCD in its capacity as a Regional Center.

2. ACCD will promptly request that USCIS acknowledge ACCD's designation of John Kessler, Counsel to the Agency of Commerce and Community Development as the principal administrator of the Regional Center.
3. ACCD will promptly request that USCIS acknowledge ACCD's designation of Jay Peak to assist in the management, administration and overall compliance of the Alien Entrepreneur project organized by Jay Peak within ACCD's Regional Center with U.S. immigration laws and regulations controlling the investment process and participation in a regional center, and to report upon the activities of the project to ACCD and respond to ACCD inquiries about the project and assist ACCD to comply with its obligations as a regional center with respect to this project;
4. Jay Peak will provide support to ACCD including, but not limited to, providing investment-related and supporting documentation to prospective investors, supplying economic analysis and modeling reports on direct and indirect job creation, defining investment opportunities within the Jay Peak project, and assisting ACCD to comply with relevant regulatory or administrative requirements in support of individual petitions filed with CIS by immigrant investors affiliated with the Jay Peak project, such as providing area maps, valid unemployment data, general economic data and demographics concerning the geographic area covered by the Jay Peak project.
5. Jay Peak will further support ACCD's compliance with regional center requirements by providing on a quarterly basis formal written progress reports on its activities, overseas meetings and other relevant efforts within and outside the United States to promote investment in the Jay Peak project through the EB-5 Alien Entrepreneur Regional Center Pilot Program. The Quarterly reports will set forth for the preceding quarter and year-to-date the number of investors, the status of alien investor capital (in escrow, transfers from escrow to the limited partnership) and activity of the limited partnership in furtherance of the project. The reports will also contain information distinguishing Investor Petitions "in preparation", "filed with USCIS," "approved by USCIS," "denied by USCIS," or "filed with the USCIS office of Administrative Appeals."
6. Jay Peak will support the purpose and goals of ACCD's Regional Center by encouraging investment and employment creation within the Regional Center through marketing at emigration fairs and conferences with individual investors inside and outside the United States; maintaining a website to promote and describe the project; preparing a desirable business plan to encourage individual investments in the project within the Regional Center; establishing escrow accounts to assist orderly investment in the project; facilitating, on a fee basis, the preparation and submission of the I-526, Alien Entrepreneur petition and petitions for other

immigration benefits to USCIS or the Department of State for individual investors; providing the primary entity and related entities to carry out the activities of the project; structuring the enterprise so that it creates requisite employment prior to the investors seeking removal of conditions; seeing to the timely completion and opening of the project; providing operating expertise and personnel to operate the project efficiently; and, if requested by individual investors, making referrals to advisors who may assist with issues arising from relocation by the investor and the investor's spouse and children to the United States.

7. Jay Peak agrees to promote investment in its project and to perform its obligations under this Agreement honestly, consistently and fairly in furtherance of its efforts to assist ACCD with the oversight and management of the Regional Center in connection with the Jay Peak project.
8. Jay Peak will act in an independent capacity and not as officers or employees of ACCD or the State of Vermont. Jay Peak shall indemnify, defend, and hold harmless ACCD, the State of Vermont and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of Jay Peak's acts and/or omissions performed under this Agreement.
9. This Agreement shall be governed by the laws of the State of Vermont.
10. This Agreement may be modified by written consent of the parties. This Agreement may not be cancelled except upon a material breach of its terms or a material misrepresentation by a party which remains uncured for more than fourteen (14) days after receipt of a Notice of Intent to Cancel that provides specific information justifying the cancellation.
11. ACCD will notify USCIS in writing within thirty (30) days of any change in the designation of the principal representative of ACCD or the principal administrator to ACCD or any significant change in or the termination of this Agreement with Jay Peak.
12. In the event of cancellation of this Agreement, ACCD will provide USCIS a clear explanation as to how services and responsibilities of Jay Peak hereunder will be performed, and by whom, without interruption to the functioning of the Regional Center in connection with the Jay Peak project or any affected alien investor in the Jay Peak project.

13. Notices given hereunder shall be in writing and delivered by courier or by U.S. mail to:

For ACCD:

The ACCD Secretary or ACCD General Counsel
National Life Building, Drawer 20
Montpelier, VT 05620-0501

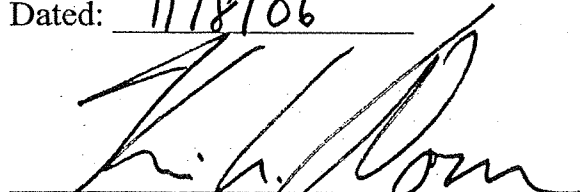
Jay Peak Hotel Suites L.P.

William Stenger
Jay Peak Resort
Jay, VT 05859-9621

The parties have executed this Agreement in duplicate originals as of the date of their signatures affixed below.

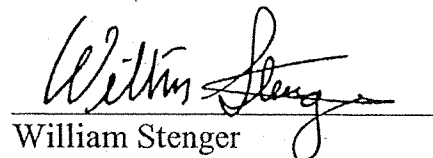
**State of Vermont Agency of Commerce
and Community Development**

Dated: 11/8/06


Kevin L. Dorn, Secretary

Jay Peak Hotel Suites L.P.

Dated: 12/21/06


William Stenger
Duly Authorized Agent of Jay Peak Management, Inc., General Partner

QUARTERLY COMPLIANCE QUESTIONNAIRE

Please respond to the following inquiries and supply all accompanying documentation and information as necessary. Limit responses to the preceding calendar quarter, thus there is no need to resend unchanged information. Also, any documentation supporting a summary document must include the source of the summarized information, which must be available upon request. Finally, any documents requiring signatures must be fully executed.

Investor Information

1. Description of all relevant efforts to promote investment in EB-5 project
2. Investors
 - a. The total number of investors
 - b. Status of each investor's capital (i.e. in escrow, transferred from escrow to limited partner, etc.)
3. Information related to each investor including:
 - a. Name;
 - b. Date of Birth;
 - c. Country of Nationality;
 - d. The U.S. city and State of residence, or intended residency;
 - e. The receipt number of all I-526 or I-829 Alien Entrepreneur Petition ("I-526 Petition");
 - f. Alien registration number (if applicable);
 - g. Status of all I-526 and I-829 Petitions in connection with EB-5 project (such as: "in preparation," "filed with USCIS," "approved by USCIS," "denied by USCIS," "filed with the USCIS office of Administrative Appeals," etc.);
 - h. Total number of visas represented per investor;
 - i. Date(s) of investment to EB-5 project;
 - j. Amount of investment in EB-5 project;
 - k. The date(s), nature and amount of any payment, remuneration, profit, or return on investment made to the alien investor by the EB-5 Project;
 - l. Total EB-5 and non-EB-5 investor capital (alien and domestic) including name and address of each "direct" job creating commercial enterprise
4. All Requests for Evidence ("RFE") received from USCIS and any corresponding RFE responses from the project entity or relevant investor
5. Copies of subscription agreements related to the sale of securities associated with the EB-5 project

10/13/2015

Rev. 07/15/2016

6. Any updated or new marketing materials and marketing information used to carry out the EB-5 project

Financial Information

7. Year to date escrow and administrative fee account statements

8. Names of financial institutions and account numbers where operating accounts are located

9. Current chart of accounts

10. Trial balances

11. Financial Statements consisting of balance sheets and profit and loss statements

12. Cash flow statement

13. Any off balance sheet liabilities

14. Amount and adequacy of reserves for litigation, taxes, environmental liabilities, and other contingent liabilities

15. All appropriate tax returns

Other

16. Accounting of all fees received and paid, and source of payment, to or from a promoter, finder, broker-dealer, or other third party entity used to locate individual investors

17. List of all project vendors, including all invoices and payment history

18. Detailed evidence of the progress made towards the completion of each capital investment project

19. Evidence and documentation of any material changes or updates to planned project timeline or execution of the project

20. A list of any pending or active material litigation or bankruptcy proceedings, including any disputes with the IRS or other tax authorities

21. An accounting of jobs, including payroll records where appropriate

22. Any material encumbrances or security interests placed against the assets or cash flow of any EB-5 project entity or its properties

23. Any additional, or not previously disclosed, parties associated with the EB-5 project

24. Any changes in names, titles, job duties, or percentage of time spent on project related duties of key personnel for all entities directly related to the furtherance of the EB-5 project.

25. Any other information the Vermont Regional Center may require

Vermont Agency of Commerce and Community Development Regional Center

ID 1031910148 / RCW 1031910148

Exhibits to Response to Notice of Intent to Terminate

2	Letter from Johannes von Trapp, President of Trapp Family Lodge
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Trapp Family Lodge
A MOUNTAIN RESORT IN THE EUROPEAN TRADITION
BY THE FAMILY THAT INSPIRED "THE SOUND OF MUSIC"

September 5, 2017

U.S. Citizenship & Immigration Services
c/o Baker Donelson law firm as counsel for Vermont Regional Center

Re: Notice of Intent to Terminate Vermont Regional Center
File: ID1031910148/RCW1031910148

Greetings:

This discussion is offered by Trapp Family Lodge, Inc. (TFL) out of concern for the recent Notice of Intent to Terminate (NOIT) to the regional center designation of the Vermont Regional Center (VRC). TFL is affiliated with the VRC via a Memorandum of Understanding, dated May 16, 2013.

TFL is quite concerned that it and its EB-5 investors will suffer irreparably if USCIS makes a final determination to revoke the authorization of the VRC.

The "new commercial enterprise" von Trapp Enterprises L.P. (NCE) has subscribed 40 EB-5 investors, all of whom have made the full \$500k investment in the NCE that in turn loaned the capital to TFL. The project is completed and so far has saved or created more than 400 direct and indirect jobs creditable to the participating EB-5 investors. The positive economic effects of the EB-5 investment are ongoing in the successful operation of the expanded brewery, new beer hall restaurant, and existing resort.

Among the 40 TFL investors, at least 9 have been admitted to the U.S. as conditional permanent residents (CPRs), an additional 13 investors have had their I-526 petitions approved, and 18 investors have filed I-526 petitions pending with USCIS. Clearly, USCIS approves of the TFL EB-5 project, as noted by its approval of the I-526 petitions of 22 EB-5 investors, going as far back as May 2015 and as recently as July 2017.¹ Issuance of these approvals began before any complaints about the VRC (or Jay Peak) were known, and they have continued after USCIS' complaints about the VRC surfaced. No TFL investor I-526 petitions have been denied. The TFL EB-5 project and its investors are completely unrelated to the issues that have prompted this NOIT.

¹ The VRC also filed an I-924 exemplar for the TFL project on August 4, 2015 (RCW1521652841), which USCIS has not adjudicated. Even at the time of such filing I-526 petitions already had been approved for the project, but the filing was made in order to seek any "grandfathering" for the project that might be available under then-proposed legislation to change eligibility rules.

Trapp Family Lodge
A MOUNTAIN RESORT IN THE EUROPEAN TRADITION
BY THE FAMILY THAT INSPIRED "THE SOUND OF MUSIC"

Throughout the period of TFL's affiliation with the VRC, TFL has provided to VRC all information about its operations and the status of its investors' immigration progress, as required by EB-5 regulations and policy. In the NOIT USCIS has noted the increased oversight efforts by VRC in the recent past. TFL has met VRC's increased due diligence requirements concerning TFL's operations and finances. The State of Vermont Department of Financial Regulation is completely satisfied with the TFL project. This Vermont agency is mentioned in the NOIT "for what appears to be a rigorous compliance program for all Regional Center projects."

There are no allegations that TFL has ever mismanaged its project or its finances, or that it or any of its principals have ever misused or misappropriated its EB-5 investors' funds. TFL is contracted to the VRC separately from and independent of any other EB-5 project affiliated with the VRC, including the Jay Peak projects. TFL has never had any opportunity to know of or suspect the activities of which Jay Peak and its principals are now accused, and which are the driving force behind USCIS's intent to revoke the authorization of the VRC. TFL bears no responsibility for these alleged activities, and has no authorization to review or correct the behavior of any other EB-5 project. TFL and its investors should not be victimized in the process of discipline being meted out to the VRC.

If the VRC designation is terminated, the 31 EB-5 investors in TFL who have not yet been admitted as CPRs will be without any practical remedy to resurrect their lost immigration benefits. The investment of each TFL EB-5 investor has been fully utilized to complete the TFL EB-5 project according to its business plan. These funds are committed irrevocably to this project. There are no financial arrangements available to TFL investors that can alter this situation. If the VRC is de-authorized, these investors will lose their priority dates. If the investors wish to continue with the EB-5 program, they will be required to invest in a different EB-5 project, which will only be possible if they have and can transfer out of China the necessary additional funds, which amount is expected to increase in the near future via statutory or regulatory change.

The loss of their priority dates is a significant issue from many of the TFL investors and their children who may have already "aged-out" of derivative eligibility or who will age out after their parents are disenfranchised by an unconditional termination of VRC's designation. Of the 40 investors in the TFL project, the priority dates are allocated as follows:

<u>I-526 Petition Filing Date</u>	<u>No. of Investors</u>
2013	11
2014	3
2015	19
2016	7

Trapp Family Lodge
A MOUNTAIN RESORT IN THE EUROPEAN TRADITION
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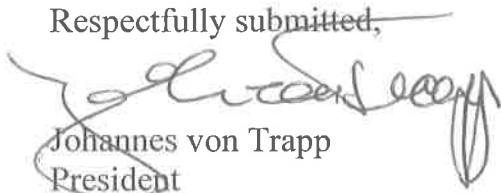
The loss of time already accumulated towards visa issuance for these investors, between approximately 1-4 years, would be a significant and unjust outcome of USCIS's unconditional termination of the VRC's designation, especially when one considers the significant impact of visa unavailability for Chinese nationals. 34 investor in the TFL project are Chinese nationals.

Plainly, the investors in TFL and the hundreds of other investors in other compliant EB-5 projects sponsored by the VRC do not deserve the punishment they will experience if the designation of the VRC is terminated unconditionally. These investors and their project developers have done nothing wrong. USCIS recognizes this, undoubtedly. It must also realize that another certain outcome to an unconditional termination of the VRC would be voluminous and seemingly endless litigation. This should not be interpreted as a threat. Under all the circumstances, viewed from the perspective of investors and projects, it would be naïve for USCIS to expect anything less.

The State of Vermont is reported to be seeking an agreement with USCIS that would forbid the State from accepting new projects in the VRC, but would permit existing EB-5 projects, currently affiliated with the VRC, and investors in these projects, to continue to engage with the EB-5 Program. If such projects and the investors remain in compliance with law and regulation, they would achieve their respective outcomes: projects would receive capital to create and grow their businesses, and would create requisite employment; and, investors would obtain unconditional lawful permanent residence and, possibly, the return of some or all their investments.

If USCIS permits this outcome, its enforcement objectives will be met regarding a regional center that is not compliant with current requirements, but those who are innocent of any wrongdoing will not be harmed as an outcome of this enforcement. TFL urges USCIS to reach this result.

Respectfully submitted,


Johannes von Trapp
President

Vermont Agency of Commerce and Community Development Regional Center

ID 1031910148 / RCW 1031910148

Exhibits to Response to Notice of Intent to Terminate

3	Letter from Richard K. Deutsch, Vice President of Business and Real Estate Development, Peak Resorts, Inc.
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September 12, 2017

USCIS, Immigrant Investor Program
131 M Street NE
3rd Floor, Mailstop 2235
Washington, DC 20529

Re: Vermont Regional Center

Dear Sir or Madam:

We are providing this letter on behalf of Peak Resorts, Inc. in support of the Vermont Regional Center's request to continue its operations and EB-5 regional center designation. The Vermont Regional Center has been, and continues to be, an important promoter of economic development in Vermont. The Regional Center has been a key participant in our overall efforts to secure EB-5 financing to develop Mount Snow. The facts speak for themselves. To date, 104 EB-5 investors have committed funds to two Mount Snow affiliated EB-5 entities that are under the oversight of the Vermont Regional Center, Carinthia Group 1, LP and Carinthia Group 2, LP. We have spent \$25.48 million of proceeds from EB-5 financing to execute our business plan. Construction is underway on our West Lake reservoir and on Carinthia Lodge, and we are meeting our targeted projections for job creation. We ask that USCIS take into account that the Vermont Regional Center is plainly fulfilling its purpose of facilitating economic growth. Without the Regional Center, we would not have this progress.

Mount Snow shares Vermont's optimism about the ability of the Regional Center to continue fulfilling obligations to existing projects and investors. Before USCIS issued its notice regarding a possible termination of the Regional Center, Mount Snow had already begun conversations with Vermont's Department of Financial Regulation (DFR) on a business plan and economic study for a possible future project in Vermont. We took this step because we have confidence in Vermont. One attribute that we think no regional center can replicate is guidance and oversight from state securities regulators in an offering, which Vermont has the ability to provide through DFR. This is a unique attribute of the Vermont Regional Center. We think that DFR having a role in the EB-5 process in Vermont is not only a safeguard for our investors, but that the gatekeeper function played by DFR is good for the EB-5 Program generally, especially as lawmakers consider integrity measures for the Program. USCIS has a compelling interest in allowing Vermont to fulfill existing commitments to EB-5 stakeholders who relied on USCIS adjudications for benefits administered by virtue of an affiliation with the Regional Center.

Mount Snow believes that combatting fraud in the EB-5 Program remains a very important goal for lawmakers to address. But terminating the Regional Center and impacting projects that had no connection with Jay Peak is not a reasonable response. We therefore respectfully ask USCIS to show all favorable consideration in permitting the Vermont Regional Center to retain its designation and continue its operations in partnership with Vermont's DFR, with the goal of continuing to promote economic growth.

Sincerely,

Richard K. Deutsch, Vice President
Business and Real Estate Development
Peak Resorts, Inc.

Vermont Agency of Commerce and Community Development Regional Center

ID 1031910148 / RCW 1031910148

Exhibits to Response to Notice of Intent to Terminate

4	Letter from Michael Goldberg, Jay Peak receiver
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Michael I. Goldberg

Akerman LLP
Las Olas Centre II, Suite 1600
350 East Las Olas Boulevard
Fort Lauderdale, FL 33301-2999
Tel: 954.463.2700
Fax: 954.463.2224

Dir: 954.468.2444
michael.goldberg@akerman.com

September 14, 2017

Via E-Mail: rdivine@bakerdonelson.com

United States Customs and Immigration Service
c/o Robert Divine, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
633 Chestnut Street, Ste. 1900
Chattanooga, TN 37450

Re: *Securities and Exchange Commission v. Quiros, et al.*, Case No. 16-CV-21301-DPG

Dear Mr. Divine,

As you are aware, on April 12, 2016, the Securities and Exchange Commission ("SEC") commenced an action against Ariel Quiros ("Quiros"), William Stenger, Jay Peak, Inc. and related entities in the United States District Court for the Southern District of Florida (the "District Court") based on allegations that these defendants defrauded innocent investors in connection with their participation in the federal EB5 program. The SEC filed this action, for among other reasons, to protect the innocent investor victims. On April 13, 2016, the District Court appointed me as receiver over Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services, LLC and Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc.. Thereafter, on April 23, 2016, the District Court expanded the receivership to include Q Burke Mountain Resort Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services.

I have recently learned that USCIS intends to immediately terminate the Vermont Regional Center ("VRC"). It is my understanding that the termination of the VRC would significantly impact those investors who have not yet had their I-526 petitions approved and who

akerman.com

have not relocated to the United States by preventing them from obtaining their green card pursuant to their investment in the Jay Peak projects. The following chart details the number of investors whose I-526 are currently pending with USCIS, and therefore, would be directly impacted if the VRC is immediately terminated:¹

Project	Number of Investors who have not yet received I-526 approval
Jay Peak Hotel Suites Stateside L.P.	1
Jay Peak Biomedical Research Park L.P.	75
Q Burke Mountain Resort, Hotel and Conference Center, L.P.	71

As you may also be aware, I have recently settled a couple of lawsuits, including one major one against Raymond James, the proceeds of which is immediately replenishing the money that Quiros and the other defendants wrongfully diverted. These funds are now being used to complete construction of the Stateside and Q Burke projects. I expect that construction will be completed by year's end and, based upon my economist's reports, I believe that sufficient job creation will be attained to satisfy the job creation requirement for every Stateside and Q Burke investor. Moreover, I am exploring the possibility of "redeploying" the Jay Peak Biomedical investors' funds into a replacement project in an attempt to create the requisite jobs for each Jay Peak Biomedical investor that elects to redeploy their funds. In short, I believe that each of the defrauded investors will be able to meet USCIS's requirements in order for them to obtain a green card. However, if the VRC is terminated, all of my efforts to date with respect to helping these victims achieve their desired immigration status will be for naught.

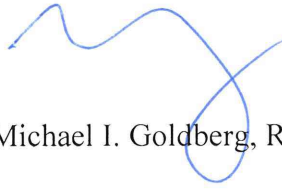
Over the last year and a half, I have had the opportunity to investigate the Jay Peak fraud. In my opinion, the fraud was brought to light in part by the State of Vermont putting financial controls in place which prevented Quiros from continuing to divert investors' funds for other than intended purposes. These financial restrictions directly led to a liquidity crisis and helped bring Quiros' otherwise secretive fraud to light. In my opinion, it seems illogical that the State of Vermont is being punished through the termination of its regional center when its own actions directly led to uncovering the fraud. At the very least, I believe an orderly wind down of the VRC over the next couple of years that would permit those investors with pending I-526 applications to have their I-526 petitions approved and to be granted the ability to move to the United States is warranted. This would be consistent with the SEC's mandate to help protect defrauded investors as well as common decency of not punishing completely innocent people who are the victims of fraud.

¹ These numbers are based on my best available information. Moreover, my records only indicate whether or not an investor's I-526 was approved. It is possible that an investor's I-526 was approved, but that the investor may not have yet received permission to enter the United States. Therefore, it is quite likely that additional investors will be negatively affected by the immediate closure of the VRC.

United States Customs and Immigration Service
c/o Robert Divine, Esq.
September 14, 2017
Page 3

As always, if you wish to discuss this matter further, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael I. Goldberg", with a large, stylized loop at the end.

Michael I. Goldberg, Receiver

MIG/jm

Vermont Agency of Commerce and Community Development Regional Center

ID 1031910148 / RCW 1031910148

Exhibits to Response to Notice of Intent to Terminate

5	Letter from Peter D. Joseph, Executive Direct of IIUSA
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Robert Kraft, President
William P. Gresser, Vice President
Stephen Strnisha, Secretary-Treasurer
Peter D. Joseph, Executive Director



Patrick F. Hogan, Director
David Souders, Director
Kyle Walker, Director
Cletus M. Weber, Director

Angelique Brunner, Director
George W. Ekins, Director
Ginny Fang, Director
Charles C. Foster, Director
Adam Greene, Director
Daniel J. Healy, Director

Email: info@iiousa.org
Telephone: 202-795-9669
www.iiousa.org

K. David Anderson, President Emeritus
Stephen Yale-Loehr, President Emeritus
Robert C. Divine, Vice-President Emeritus
Robert G. Honts, Sec-Treasurer Emeritus
Henry Liebman, Director Emeritus
Tom Rosenfeld, Director Emeritus

VIA EMAIL

September 12, 2017

U.S. Citizenship and Immigration Services
c/o Baker Donelson as counsel for Vermont Regional Center

RE: Regional Center Designation of Vermont Agency of Commerce and Community Development

Dear Officers:

On behalf of Invest in the USA (“IIUSA”), the national not-for-profit trade association of the EB-5 Regional Center industry, I urge you to allow the Vermont Agency of Commerce and Community Development (“Vermont Regional Center”) to maintain its designation as a regional center and implement the Governor’s recently-approved plan for an orderly wind-down of its operations.

EB-5 regional centers are the core members of IIUSA. To date, IIUSA represents over 260 regional center members, which account for the vast majority of all EB-5 capital formation in the U.S.

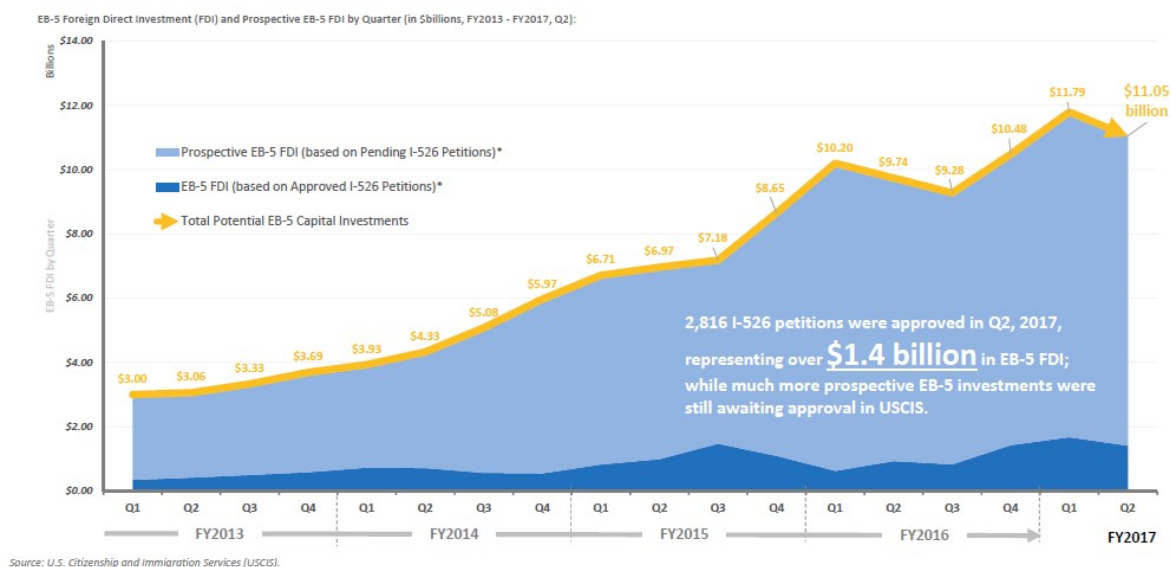
IIUSA members compete internationally to bring investment to the U.S. Since 2008, over \$20 billion in EB-5 capital¹ has been invested into the U.S. economy through the EB-5 Regional Center Program (the “Program”). In addition, the Program creates American jobs through investment, approximately 16 jobs per EB-5 investor² as estimated through a U.S. Department of Commerce study on the Program. This equated to over 174,000 jobs in FY2012-13 alone³. From FY2010-2013, investment from EB-5 investors generated over \$1 billion in federal tax revenue and over \$567 million in local/state tax revenue⁴. In the Vermont Regional Center alone, there are over 1,000 investors that – using the same methodology as the U.S. Department of Commerce – support over 17,000 jobs in the regional economy that are all at risk without the approval of the Governor’s plan.

¹ Estimate \$500,000 in EB-5 investment per every approval of I-526 petition. Data source: Number of I-526 Immigrant Petitions by Alien Entrepreneurs by Fiscal Year, Quarter, and Case Status: <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-526-immigrant-petition-alien-entrepreneur> (accessed June 9, 2017)

² Estimating the Investment and Job Creation Impact of the EB-5 Program by U.S. Department of Commerce: <http://www.esa.doc.gov/reports/estimating-investment-and-job-creation-impact-eb-5-program>

³ Estimating the Investment and Job Creation Impact of the EB-5 Program by U.S. Department of Commerce, *supra* note 2.

⁴ The Economic Impact and Contribution of the EB-5 Immigration Program 2013 by Alward Institute for Collaborative Science: https://iiousa.org/blog/wp-content/uploads/2015/05/Economic-Impacts-of-the-EB-5-Immigration-Program_2013_FINAL-web.pdf



(Table 1: Total Estimate of Capital Investment through EB-5 Regional Centers since FY2013 by Quarter)

	Investment Spending (\$ millions)			Job Creation Estimate
	Total	EB-5	Non-EB-5	
Total	\$16,693	\$5,773	\$10,920	174,039
Regional Center Program	\$16,366	\$5,446	\$10,920	169,759
Direct EB-5	\$327	\$327	\$0	4,280

Source: U.S. Department of Commerce

(Table 2: Total Investment and Job Creation through EB-5 Program, FY2012 and FY2013)

Our members depend on the reputation of the U.S. as a nation where investors' interests are protected by laws, and justice is administered fairly. If this reputation is tarnished even slightly, IIUSA members will face a significant decline in investor confidence; which, in-turn, diminishes the Program's ability to create jobs, improve the economy, and expand the United States' tax base.

While Jay Peak has encountered some unfortunate circumstances, at least 7 of its 8 projects are substantially complete and operating. Additionally, the Vermont Regional Center has sponsored several projects unrelated to Jay Peak, including:

- Sugarbush Resort (<https://www.sugarbush.com/>),
- Country Home Products (<http://www.chp.com/>),
- Trapp Family Lodge (<https://www.trappfamily.com/>),
- Mount Snow (<http://mountsnoweb5.com/>),
- Seldon Technology (<http://www.carbonblocktech.com/seldon-technologies/>).

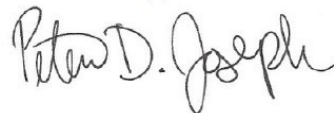
As these additional projects continue to operate and create jobs, the Vermont Regional Center continues to promote economic development. Investors who have sustained their investments in these projects have honored their obligations under the Program. If the Vermont Regional Center's designation is terminated, these investors' pending immigrant petitions will be denied accordingly. Thus, terminating the Vermont Regional Center's designation will deprive these investors of the benefit they deserve from holding up their end of EB-5 requirements.

Terminating the Vermont Regional Center will not only harm innocent investors, but the regional center industry as a whole. News of petition denials issued to investors in successful projects will spread quickly throughout the immigrant investor marketplace and undercut the United States' reputation as a nation that sufficiently protects investors. Absent assurance that investments in successful projects can reliably lead to U.S. permanent residence, the investor marketplace will shrink considerably. As a result, the Program, which has raised billions of dollars in capital and created hundreds of thousands of jobs for U.S. workers at no cost to taxpayers, will suffer irreparable harm.

The Vermont Regional Center hosts EB-5 projects rather than undertaking development directly. Using the Vermont Regional Center's infrastructure, private developers independently raise capital and undertake individual projects. Each successful project sponsored by the Vermont Regional Center has been completed in the absence of specific regulatory standards defining the level of oversight a regional center must exercise over its project partners. In light of its benefit to the United States' economy, and the disastrous unintended consequences that would result from its termination, the Vermont Regional Center's designation should be maintained.

Thank you for your attention to all of the interests at stake in this difficult and complex decision. It would be my pleasure to provide additional details as to the role of the Vermont Regional Center within the regional center industry upon request. Should you have additional questions or require further information regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, reading "Peter D. Joseph". The signature is fluid and cursive, with the first name "Peter" and last name "Joseph" clearly legible.

Peter D. Joseph

Executive Director